

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARILYN KUNELIUS,

Plaintiff,

v.

TOWN OF STOW, et al.

Defendants.

Civil Action No. 05-11697-GAO

**MOTION OF THE TRUST FOR PUBLIC LAND AND CRAIG A. MACDONNELL FOR
LEAVE TO FILE A RESPONSE**

Pursuant to Local Rule 7.1(B)(3), Defendants The Trust for Public Land ("TPL") and Craig A. MacDonnell hereby request leave to file the accompanying Response to Plaintiff's Supplemental Memorandum in Opposition to the Trust for Public Land's Motion to Quash and In Support of Plaintiff's Motion For Sanctions.

Although plaintiff already filed a memorandum in support of her Motion for Sanctions and in opposition to TPL's Motion to Quash, plaintiff recently filed, without seeking leave of court, a Supplemental Memorandum in Opposition to the Trust for Public Land's Motion to Quash and in Support of Plaintiff's Motion for Sanctions ("Supplemental Memorandum"). The Supplemental Memorandum made numerous false and misleading accusations of misconduct by TPL and Mr. MacDonnell which are unsupported in the record. To the extent the Court intends to consider any of the statements included in plaintiff's Supplemental Memorandum filed without leave of court, TPL and Mr. MacDonnell request leave of court to file the attached limited response in order to correct plaintiff's inaccuracies and misrepresentations and to bring the most egregious misstatements to the Court's attention.

WHEREFORE, TPL and Mr. MacDonnell respectfully request that this Court grant them leave to file the accompanying Response to Plaintiff's Supplemental Memorandum in Opposition to the Trust for Public Land's Motion to Quash and In Support of Plaintiff's Motion For Sanctions.

Respectfully submitted,

CRAIG A. MACDONNELL

THE TRUST FOR PUBLIC LAND

By his attorneys,

By its attorneys,

/s/ James B. Conroy

Peter E. Gelhaar (BBO # 188310)
James B. Conroy (BBO # 096315)
Donnelly, Conroy & Gelhaar, LLP
One Beacon Street, 33rd Floor
Boston, MA 02108
(617) 720-2880

/s/ Dahlia S. Fetouh

Richard A. Oetheimer (BBO # 377665)
Dahlia S. Fetouh (BBO # 651196)
Patricia M. Murphy (BBO # 665056)
Goodwin Procter LLP
Exchange Place
Boston, MA 02109
(617) 570-1000

Dated: May 1, 2007

LOCAL RULE 7.1(A)(2) CERTIFICATION AND CERTIFICATE OF SERVICE

I, Dahlia S. Fetouh, hereby certify that on May 1, 2007, I attempted to confer in good faith with Michael C. McLaughlin, counsel for Marilyn Kunelius, but was unable to reach him.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 1, 2007.

/s/ Dahlia S. Fetouh

Dahlia S. Fetouh

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARILYN KUNELIUS,

Plaintiff,

v.

TOWN OF STOW, et al.

Defendants.

Civil Action No. 05-11697-GAO

**DEFENDANTS THE TRUST FOR PUBLIC LAND AND CRAIG A. MACDONNELL'S
RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION
TO THE TRUST FOR PUBLIC LAND'S MOTION TO QUASH AND IN SUPPORT OF
PLAINTIFF'S MOTION FOR SANCTIONS**

Defendants The Trust for Public Land ("TPL") and Craig A. MacDonnell file this response to plaintiff Marilyn Kunelius' Supplemental Memorandum in Opposition to the Trust for Public Land's Motion to Quash and in Support of Plaintiff's Motion for Sanctions ("Supplemental Memorandum"). Although plaintiff has already filed a lengthy memorandum in support of her Motion for Sanctions and in opposition to TPL's Motion to Quash, plaintiff has now filed this Supplemental Memorandum claiming that information uncovered at the deposition of non-party Serena Furman reveals "additional and serious misrepresentations" by TPL and Mr. MacDonnell to the Court and to plaintiff.¹ Although plaintiff's latest allegations are wholly irrelevant to the ultimate issue in this case, namely, whether the liquidated damages clause represents plaintiff's sole remedy for the breach of the Purchase and Sale Agreement by TPL, the accusations are so caustic and their falsity so plain, that TPL and Mr. MacDonnell respond to the

¹ Plaintiff filed the Supplemental Memorandum without the required leave of Court. See Local Rule 7.1(b)(3). TPL and Mr. MacDonnell offer this response only to the extent the Court intends to consider any of the statements offered in plaintiff's Supplemental Memorandum.

Supplemental Memorandum solely to correct plaintiff's inaccuracies and misrepresentations and to bring the most egregious misstatements to the Court's attention. The following are examples of some of the ways in which plaintiff misstates the record.

I. PLAINTIFF'S ALLEGATIONS THAT TPL PREVENTED ALL FUNDRAISING FOR THE PROJECT ARE BLATANTLY FALSE.

Plaintiff's new allegations are based solely on the testimony of, and documents produced by, non-party Serena Furman, a member of a local organization, the Friends of Red Acre ("FORA"), that worked with TPL toward the acquisition of plaintiff's property. In her Supplemental Memorandum, plaintiff claims that Ms. Furman's testimony, and documents Ms. Furman voluntarily produced, revealed that "TPL had ordered that no fundraising take place at all." (Supplemental Mem. at 4) (emphasis in original). Setting aside the point that TPL had no power to order FORA to do anything at all, Ms. Furman testified to just the opposite—that TPL never ordered FORA to stop fundraising. "To go out and further try to identify individuals that would be willing to make a promise of a donation, no, I don't believe he [Craig MacDonnell of TPL] ever asked us to stop." (Furman Tr. Vol II, p. 60:15-22) (attached hereto as Exhibit A). Plaintiff failed to cite this testimony in her Supplemental Memorandum.

Plaintiff attempts to bolster her assertion by quoting one sentence in a document produced by Ms. Furman stating that TPL "repeatedly delayed the start up of the fundraising committees." (Supplemental Mem. at 5, citing Letter from Furman to MacDonnell, bates labeled Furman0108-0110, attached to plaintiff's Supplemental Memorandum as Exhibit A). What plaintiff neglects to mention, however, is that the very next sentence of this document describes the reason for such delay.

There was an understandable reluctance on the part of TPL to fundraise before certain key decisions were made regarding town

support and Zoning Board approvals. Decisions that put off the funding campaign were based on real concerns and considerations. It is in hindsight after the DHCD grant decision [denial of a key state grant for the project] that TPL might realize that fund raising should have begun in early '03.

Exhibit A to Supplemental Memorandum at Furman0108. Furthermore, when asked about this very document at deposition, Ms. Furman testified that TPL's decision to delay some of the fundraising was a prudent, strategic decision. "Well, and I think I've made mention to this before, you don't want to request funds from foundations and then write them back and say, gee, I'm sorry, this project can't go forward. We can't use your funds. It would basically prevent TPL from ever going to that foundation again for the rest of their, you know, existence." (Furman Tr. Vol. II, p. 92:5-11). Somehow, plaintiff's Supplemental Memorandum overlooks that testimony. It also ignores the fact that, over the two days of her deposition, Ms. Furman repeatedly described TPL's decision to delay some of the fundraising until after the zoning issues were resolved as careful and logical (*see, e.g.*, Furman Tr. Vol. I, pp. 29:23-30:6; 54:7-10; 86:4-24, attached to plaintiff's Supplemental Memorandum as Exhibit G), not as unethical or sinister, as plaintiff argues.

Plaintiff further asserts that TPL engaged in "no fundraising effort at all." (Supplemental Mem. at 9). This flatly contradicts and ignores Ms. Furman's testimony that TPL did, in fact, undertake significant fundraising efforts. For instance, Ms. Furman testified that "we made some presentations to funders that had already been identified to see if they would give more. And the DHCD grant. That's the major fund-raising effort. That was a lot of work by TPL. That was a lot of work." (Furman Tr. Vol. 1, p. 80:7-14, attached to plaintiff's Supplemental Memorandum as Exhibit G).

II. PLAINTIFF'S BALD ALLEGATIONS THAT THE DEFENDANTS MADE MISREPRESENTATIONS TO THE COURT AND TO PLAINTIFF ARE WHOLLY UNSUPPORTED.

Plaintiff cites numerous documents provided by Ms. Furman at her deposition (attached to plaintiff's Supplemental Memorandum as Exhibits C, D and F) as evidence that TPL and Mr. MacDonnell withheld information and attempted to mislead the Court and the plaintiff. This is nonsense.

The first document, a draft email from Peter Christianson of FORA to Craig MacDonnell (attached to plaintiff's Supplemental Memorandum as Exhibit C), was never established as having been sent to Mr. MacDonnell or anyone at TPL. In fact, Ms. Furman testified at deposition, "we don't believe this was sent." (Furman Tr. Vol. II, p. 44:13-14; *see also* Furman Tr. Vol. I, p. 108:1-14). TPL and Mr. MacDonnell cannot have withheld a document that they never possessed.

Plaintiff next argues that TPL and Mr. MacDonnell withheld from the Court and the plaintiff information contained in a July 23, 2003 email from Mr. Christianson (attached to plaintiff's Supplemental Memorandum as Exhibit F). (Supplemental Mem. at 7). However, this document was an internal email from Mr. Christianson to other FORA members, and was never sent to or seen by anyone at TPL. Again, TPL and Mr. MacDonnell cannot have withheld from the Court or the plaintiff a document that they never saw.

Plaintiff also cites to a portion of the deposition transcript of Mr. MacDonnell, in which he said that he never told FORA not to fundraise because TPL did not want to go forward with the project, as evidence that TPL and Mr. MacDonnell deliberately attempted to mislead the Court and the plaintiff concerning TPL's fundraising efforts. (Supplemental Mem. at 5-6). However, when plaintiff's counsel asked Ms. Furman about this very passage from Mr.

MacDonnell's transcript, apparently looking for Ms. Furman to state that Mr. MacDonnell had lied, Ms. Furman confirmed the accuracy and veracity of Mr. MacDonnell's testimony. "Well, that's right. I mean, it's not because TPL didn't want to go forward. It's because there wasn't time to start, because they need to get these other things taken care of first." (Furman Tr. Vol. I, p. 150:15-18).

III. PLAINTIFF'S ALLEGATIONS OF UNETHICAL MISCONDUCT BY TPL AND MR. MACDONNELL ARE BOGUS AND UNSUPPORTED.

Throughout the Supplemental Memorandum plaintiff also claims that documents provided by Ms. Furman demonstrate that TPL and Mr. MacDonnell engaged in unethical misconduct in various ways. These allegations are so bereft of factual support in the record that plaintiff resorts to mischaracterizing deposition testimony and citing the record in such a selective and incomplete manner that it is hard to see how the Supplemental Memorandum is anything but deliberately misleading.

For instance, plaintiff asserts that the documents provided by Ms. Furman "clearly show that FORA and Furman had identified that TPL had undertaken steps to ensure that TPL would not purchase the Property." (Supplemental Mem. at 4). However, plaintiff fails to mention that plaintiff's counsel directly asked Ms. Furman if she believed that "TPL was proposing plans that could not succeed" and her response was clear: "I don't think they were intentionally putting out a plan that wouldn't work." (Furman Tr. Vol. II, p.42:9-11).

Plaintiff also asserts that TPL and Mr. MacDonnell engaged in unethical behavior by using for other TPL projects a potential donor list provided by FORA. In addition to being wholly irrelevant to the claims and defenses in this lawsuit, plaintiff inexplicably fails to mention that when plaintiff's counsel asked Ms. Furman in deposition about this very issue, Ms. Furman stated that TPL and Mr. MacDonnell were not asked nor required to use those prospects only for

FORA's project, and that TPL had likely already used many of those contacts before FORA ever gave them the list.

Q: Are you aware of any standard among not for profits, charitable institutions, where someone in the position of your husband providing this information to TPL, that that standard would have suggested that it would have been just available for the Friends of Red Acre fund-raising efforts?

A: No, and I'm also fairly certain that the list of the prospect pool, I think that we both believe it's highly likely that many of those had been identified and used before by TPL.

Furman Tr. Vol. I., p. 70:16-71:2.

CONCLUSION

Respectfully, TPL and Mr. MacDonnell submit that plaintiff's latest attempt not only to distract the Court from issues that are actually relevant to the claims and defenses in this lawsuit but also to make further accusations of misconduct against the defendants that are not only false and misleading but deliberately so, should not be tolerated.

Respectfully submitted,

CRAIG A. MACDONNELL

THE TRUST FOR PUBLIC LAND

By his attorneys,

By its attorneys,

/s/ James B. Conroy
Peter E. Gelhaar (BBO # 188310)
James B. Conroy (BBO # 096315)
Donnelly, Conroy & Gelhaar, LLP
One Beacon Street, 33rd Floor
Boston, MA 02108
(617) 720-2880

/s/ Dahlia S. Fetouh
Richard A. Oetheimer (BBO # 377665)
Dahlia S. Fetouh (BBO # 651196)
Patricia M. Murphy (BBO # 665056)
Goodwin Procter LLP
Exchange Place
Boston, MA 02109
(617) 570-1000

Dated: May 1, 2007

CERTIFICATE OF SERVICE

I, Dahlia S. Fetouh, do hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 1, 2007.

/s/ Dahlia S. Fetouh
Dahlia S. Fetouh

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EXHIBIT A

DEPOSITION OF SERENA FURMAN

MINIDEP by Hanson

Volume: II
 Pages: 1-105
 Exhibits: 31

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11697-GAO

MARILYN KUNELIUS,
 Plaintiff,
 v.

TOWN OF STOW, separately,
 A PARTNERSHIP OF UNKNOWN NAME
 BETWEEN TOWN OF STOW and THE
 TRUST FOR PUBLIC LAND, separately,
 and CRAIG A. MacDONNELL, in his
 individual capacity,
 Defendants.

CONTINUED DEPOSITION of SERENA FURMAN, a witness called
 by and on behalf of the Plaintiff, taken pursuant to
 Fed.R.Civ.P. 30, before Roberta J. Daniels, a Court
 Reporter and Notary Public within and for the Commonwealth
 of Massachusetts, at the Law Offices of Michael C.
 McLaughlin, One Beacon Street, Suite 3333, Boston,
 Massachusetts 02108, on Tuesday, April 17, 2007, scheduled
 to commence at 5:00 P.M.

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APPEARANCES

Michael C. McLaughlin, Esquire
 Law Offices of Michael C. McLaughlin
 One Beacon Street, Suite 3333
 Boston, Massachusetts 02108
 Counsel for the Plaintiff

Deborah I. Ecker, Esquire
 Brody Hardoon Perkins & Kesten, LLP
 One Exeter Plaza
 Boston, Massachusetts 02116
 Counsel for Defendant Town of Stow

Patricia M. Murphy, Esquire
 Goodwin Procter, LLP
 Exchange Place
 Boston, Massachusetts 02109
 Counsel for Defendant The Trust for Public Land

James B. Conroy, Esquire
 Donnelly, Conroy & Gelhaar, LLP
 One Beacon Street, 33rd floor
 Boston, Massachusetts 02108
 Counsel for Defendant Craig A. MacDonnell

Also present:

Lucie DeBellis, Paralegal
 Law Offices of Michael C. McLaughlin

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DEPOSITION OF SERENA FURMAN

MINIBEP by Kenson

1 PROCEEDINGS
2 Tuesday, April 17, 2007
3 5:03 P.M.
4 MR. McLAUGHLIN: Counsel have just
5 discussed my efforts to go back over the Furman
6 testimony and to refer to the specific
7 descriptions of documents that she provided at
8 the time of her deposition, and we have now Bate
9 stamped her documents and pre-marked them as
10 exhibits beginning with Exhibit 8, and we have a
11 document that is entitled, "Furman Documents for
12 Marking as Exhibits," which is a description of
13 what we were talking about during the deposition,
14 the Bate stamp number that has now been applied
15 to those, and the exhibit number that we have now
16 pre-marked.
17 So, I'm going to put this in as perhaps
18 Exhibit 7A, something like that. Why don't we do
19 that, as Exhibit 7A, so that we have some track
20 of what we're referring to, and then from here
21 forward we will use the exhibit designation.
22 I've also said to counsel that, if for some
23 reason we are incorrect on something, they can
24 object at some future time should they find that

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1 we have made a miscalculation as to what the
2 document is.
3 All right. So, I'll leave it at that.
4 (WHEREUPON, Exhibit No. 7A, Furman
5 Documents for Marking as Exhibits, marked for
6 identification.)
7 MR. McLAUGHLIN: Hello.
8 THE WITNESS: Hi.
9 MR. McLAUGHLIN: Nice to see you again.
10 I have, hopefully, just a few questions before
11 other counsel talk to you.
12 DIRECT EXAMINATION
13 By MR. McLAUGHLIN:
14 Q We've gone through the documents that you provided to
15 us. Are you familiar with any discussions between
16 Friends of Red Acre and Craig MacDonnell about
17 lowering the purchase price to be paid to
18 Mrs. Kunelius prior to the town accepting the
19 right of first refusal?
20 A No.
21 Q I'm going to put before you a document that has been
22 marked as -- maybe it hasn't. Let's see.
23 (WHEREUPON, Exhibit No. 11,
24 Christianson email to MacDonnell, dated January

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1 30, 2003, marked for identification.)
2 Q I'm going to put before you what has been marked as
3 Exhibit 11 and ask you if you recognize this document.
4 A Recognize it.
5 Q Just for your benefit, this is one of the documents
6 that you provided to us. We've just marked it with
7 the designation, at the bottom, of Furman0035.
8 A Right. Just, technically, I'm not very good at
9 remembering documents. So, if it came out of my
10 package, it's something that I brought to the table.
11 Q If you could look, this appears to be, Exhibit 11
12 appears to be, to Craig from Peter on behalf of FORA.
13 Do you call it FORA? Is that how you say it?
14 A FORA.
15 Q FORA, okay. And I'd ask you to look at 2(b), which
16 reads: What is the likelihood of reducing the sale
17 price after assignment?
18 I'd ask you if you remember the
19 circumstances concerning the issue of the
20 possibility of reducing the sale price after
21 assignment, if you know.
22 A I would love to read the document that this was
23 referring to, you know, to read the document that
24 Craig sent.

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1 Q Well, does this in any way refresh your memory that
2 there was a discussion concerning the possibility of
3 lowering the purchase price in January of 2003?
4 That's several weeks prior to the assignment.
5 A Well, I don't know if a discussion actually ever
6 happened. What I'm trying to do is understand the
7 intent of this letter. The 1.16 million was the
8 purchase price for the property, is that correct?
9 Q Roughly, yes.
10 A And then the 1.3 million was the estimate to cover the
11 closing costs. I don't remember the context of this.
12 I mean, it seems to me that what happened is that the
13 fund-raising goal was elevated by TPL from 1.16 to 1.3
14 to cover closing costs, and what we're trying to do is
15 understand what those differences are.
16 Q And when you refer to covering closing costs, are you
17 referring to the specific costs of effectuating the
18 transfer from Mrs. Kunelius to TPL?
19 A Well, we didn't, at this time, understand what it
20 represented, but since then, there's some documents
21 that say that TPL wants to recover their hard costs in
22 doing discovery of the property, et cetera.
23 Q Do you recall any discussions in January of 2003
24 between FORA and MacDonnell concerning the possibility

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1 that the purchase price may not be able to be met if
2 TPL's other hard costs had to be met as well?
3 A I don't recall.
4 Q Do you recall any discussion as to what a closing cost
5 compromise was as reflected in 2)?
6 A Comprise.
7 Q I'm sorry. I apologize. I misread that, so I'll
8 withdraw the question.
9 Do you recall what the expenses associated
10 with due diligence were?
11 A I don't think TPL ever shared with us an itemized list
12 of those items as part of their management of the
13 project.
14 Q So, the sentence in Paragraph 2 that begins with As
15 you know, it reads: As you know, the 1.3 million was
16 simply an estimate to cover closing costs.
17 Is it your testimony that that estimate was
18 TPL's estimate, or was it FORA's estimate?
19 A It wasn't FORA's estimate, no. I wouldn't see how any
20 of us would be in a position to make that kind of an
21 estimate.
22 Q In Paragraph 2(I), there's a reference to how much it
23 would cost to get G. Jones to leave the country.
24 A Greg Jones, yes. Well, he was very actively opposing

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1 us. So, that was a joke.
2 Q I suspected. Even I could discern that. However, my
3 question was related to what significance Greg Jones'
4 opposition had since -- well, strike that.
5 Did you believe at that time that Greg
6 Jones' opposition was sufficient to potentially
7 prevent the deal from going forward?
8 A Only insofar as he was trying to affect voting at town
9 meeting.
10 Q There are other documents which I have referred to
11 already during your earlier deposition with regard to
12 TPL in which you explained that TPL should not attempt
13 to lower the purchase price with the seller. Do you
14 recall those documents, that document?
15 A I believe that we suggested that they not attempt it.
16 Q They not, okay.
17 A Do I recall the documents, or do I recall that being
18 our counsel?
19 Q Do you recall that being your counsel? I mean, I can
20 get the document. I had kind of hoped to move
21 quicker, but if you want it, I can get it for you.
22 A Other than having a strong feeling that the seller was
23 not going to entertain that, I don't recall other
24 reasons why we would suggest that. And this was what

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DEPOSITION OF SERENA FURMAN

MINIDEP by Kenyon

1 time, too? What date were you talking about for
2 lowering the price?
3 Q Let me just find the document. Okay. It's 90, which
4 is Exhibit 15.
5 A July.
6 Q Yeah.
7 A So, that's later, and that to make up the difference
8 for what --
9 Q Let me just put it in front of you. This is going to
10 be 15.
11 A The date means a lot, you know, puts it in context.
12 (WHEREUPON, Exhibit No. 15, FORA letter
13 to MacDonnell, dated July 27, 2003, marked for
14 identification.)
15 Q If you'd look at Exhibit 15, the second page, which is
16 Bate stamped Furman91, at the very bottom, it says:
17 FORA does not believe that it's necessary to
18 renegotiate a lower price with the seller.
19 Now, I think this is a document from you, is
20 that correct?
21 A Uh-huh.
22 Q It says Friends of Red Acre, but I think you had
23 testified you were the author of this, is that
24 correct?

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1 A Yes.
2 Q So, my question is, in comparing these two documents,
3 that is the document that's been marked as 15 and the
4 document that's been marked as 11, both of them refer
5 to the lowering of the purchase price. My question is
6 whether these two documents in any way help you to
7 recall when the issue of lowering the purchase price
8 became a topic of discussion with FORA and TPL.
9 A Well, I definitely believe that it's mid to late
10 summer, was when it began to be clear that that
11 funding difference was something that TPL was having a
12 very hard time with. Going back to this earlier one
13 about reducing the sale price after assignment, I
14 mean, during any purchase and sale, when you go
15 through discovery of a property, you do have an
16 opportunity to go back to the seller based upon what
17 you find in your discovery and, you know, negotiate.
18 So, that's what I would assume. That's the
19 only level of that, you know, query was about,
20 you know, if you find that there's toxic waste or
21 something on the property.
22 Q Well, you're aware that no toxic waste or --
23 A No, no, absolutely.
24 Q And you're aware that TPL undertook analysis of the

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1 site?
2 A Yeah.
3 Q And that included environmental analysis?
4 A Yeah, but I don't think that was completed by January
5 30th.
6 Q No, I'm not saying that. I'm just saying you're aware
7 that they undertook those types of analyses, is that
8 correct?
9 A I'm just aware that there wasn't any discovery that
10 they raised with us where they had an issue with the
11 property, other than the obvious zoning ones.
12 Q Do you recall if you had a specific response from
13 Craig MacDonnell concerning your statement on Exhibit
14 15 that there is no need to renegotiate the purchase
15 price with the seller?
16 A He usually is pretty good about writing back. I have
17 a letter from August 6th that he wrote.
18 Q And does he specifically, in that letter, deal with
19 the necessity to lower the purchase price?
20 A He said he was unsuccessful in getting purchase price
21 concessions. This is probably after he offered the
22 price. Let's see if there's something earlier. No,
23 the next, most previous, document I have is this one.
24 So, that was the next thing that I have.

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1 Q I'd like you to look at another document, if you
2 would, which is -- let me put this in front of you.
3 (WHEREUPON, Exhibit No. 24, DRAFT
4 Conditions for Transfer of Right of First
5 Refusal, marked for identification.)
6 Q I'm putting before you a document entitled -- and this
7 is now Exhibit 24 -- entitled, "DRAFT Conditions for
8 Transfer of the Town's Right of First Refusal on the
9 Kunelius Property." I will tell you that this
10 document has been already identified by Ross Perry as
11 the non-bolded language being authored by Ross Perry
12 and the bold language being the response by Craig
13 MacDonnell. So, if you look, and it's a three-page
14 document, the last page of which appears to be
15 intended to be signed by Ross Perry. Simple question
16 here. How is it that FORA has this document, which
17 appears to be correspondence prior to the assignment
18 from the town?
19 A Good question. Well, there's only two sources. It
20 could have been Ross Perry or it could have been Craig
21 MacDonnell. It's unusual that we see third-party, you
22 know, pieces where TPL is working with other people.
23 They didn't copy us, generally, on things like that,
24 but that was fairly early, wasn't it, in January or

- 15 -

1 so?
2 Q The final version of this, which appears, in all
3 respects, to be identical to this, except it doesn't
4 have DRAFT on it, at least in my best recollection, is
5 the day before the assignment.
6 A Oh, okay.
7 Q From the town to TPL. Does your answer with regard --
8 A Well, look at the very top. The Board would
9 appreciate advance notice if any of these items will
10 be an issue by TPL or Friends of Red Acre. That
11 indicates to me that it came from the Board of
12 Selectmen for our review, which is a bit bizarre.
13 Q Could you tell me if there's anything on this document
14 that would suggest that Friends of Red Acre responded
15 to any of these issues?
16 A To the town?
17 Q Yes.
18 A No.
19 Q In other words, the first paragraph says: The Board
20 will appreciate advance notice if any of these items
21 will be an issue to Friends of Red Acre. And so my
22 question is did you respond in any way to Items 1
23 through 7(f)?
24 A I don't recall. It doesn't seem like something we

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1 would do. We would just go through TPL.
2 Q So, do you recall discussing TPL's answers with them
3 prior to them being given to the town?
4 A I don't recall.
5 Q Do you recall making any recommendations to TPL
6 concerning any of the issues raised in Items 1 through
7 7(f)?
8 A In Item 4, there were some concerns because of the
9 possible use of water on the property and horse farms
10 being a concern to some citizens, that I was
11 researching things that related to how, currently,
12 horse farms do all of these great things to prevent
13 barn runoff from affecting ground water. So, this
14 kind of language in here may have been something that
15 I might have helped them with, but it might have been
16 in a previous document that I gave to TPL that they
17 drew from, from a presentation to town meeting.
18 Q Looking at the last page of this exhibit, could you
19 tell me if you recall reading the last response, which
20 is in bold above the word regards, beginning with TPL:
21 Because the decided cases under Chapter 61 do not
22 explicitly resolve all of the potential issues that
23 arise when a municipality assigns its right of first
24 refusal to a non-profit conservation organization,

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DEPOSITION OF SERENA FURMAN

MINIDEP by Kenson

1 including which of the terms of the underlying
 2 contract should obligate the assignee, it would be
 3 prudent for TPL and Marilyn Kunelius' attorney to
 4 enter a good-faith dialogue to determine which terms
 5 are relevant and which terms are truly inapplicable.
 6 A What's the question?
 7 Q Did you read that prior to the assignment by the Town
 8 of Stow?
 9 A I can't tell you whether I saw this before or after
 10 the assignment.
 11 Q Was FORA aware, or you, that there was an issue as to
 12 whether some terms of the underlying contract were
 13 applicable to TPL and some were not?
 14 A The underlying contract being the purchase and sale?
 15 Q The purchase and sale agreement.
 16 A I'm not really knowledgeable on that. I would have
 17 assumed that once you paid the price, the asking
 18 price, you were in full compliance with it. That's
 19 how far my knowledge goes with these things.
 20 (WHEREUPON, Exhibit No. 12, MacDonnell
 21 email to Christianson, dated February 25, 2003,
 22 marked for identification.)
 23 Q I'm going to put before you a document which has been
 24 designed as Exhibit 12 and has the designation of

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1 Furman56, 57, 58 and 59 on it, and I want to ask you.
 2 This appears to be a document from your husband, a
 3 series of emails, is that correct?
 4 A Yes.
 5 Q This is a document you provided to us, and it has the
 6 handwritten date of 2-25-03, and I want to direct your
 7 attention to the second page, and I am not a computer
 8 person, so I cannot decipher all of the tracking or
 9 the addressing, or whatever the term is that is done
 10 in an email, but there is, about one-third of the way
 11 down, a sentence that begins: Thanks for refining the
 12 numbers for us and NBSP. What's NBSP?
 13 A Thanks for refining the numbers. Let's talk in
 14 greater detail?
 15 Q Yes.
 16 A That's exactly the same as the cover note up here.
 17 Q What is N --
 18 A I think that's just -- it's computer code.
 19 Q It then goes on to say: All we need for closing is
 20 725.
 21 A As it says on the top as well.
 22 Q Four hundred from the town, 325 from SCT.
 23 A RAF and a few others.
 24 Q Right. And, again, you're right. This is all on the

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1 first page of Exhibit 12.
 2 A Right.
 3 Q I think I asked you back when you first testified
 4 whether you understood what that 725 was for. I'm
 5 going to ask you again. Do you understand what that
 6 meant?
 7 A What's the critical number? Why is \$725,000 a
 8 critical number?
 9 Q Yes. This appears to be an email from Craig
 10 MacDonnell to your husband.
 11 A Right.
 12 Q And I'm just wondering whether you, as a member of
 13 FORA, understood what the closing -- all we need for
 14 closing is 725,000. I think you testified that meant
 15 725,000, and I'm just wondering if you --
 16 A Would that relate to what the payment requirements
 17 were for the purchase and sale?
 18 Q All right. You're just guessing at this point?
 19 A Yeah.
 20 Q Yeah, okay. All right. Do you know if your husband
 21 had a habit of copyrighting his correspondence?
 22 A In a humorous way, yes.
 23 Q It was not intended to be a copyright?
 24 A Where?

- 20 -

1 Q Not on this document, but, in general, do you know him
 2 to have a habit of copyrighting his correspondence?
 3 A No, there's a long-running joke. He has a copyright
 4 symbol underneath the dining room table of my friend's
 5 house so that he copyrights everything they say, and
 6 then they turned around and copyrighted him, so. It's
 7 a long-standing joke.
 8 Q Oh, I see. So, that's sort of an in-joke?
 9 A It's an in-joke. That's all.
 10 Q Had me flummoxed on it.
 11 A I didn't see the copyright symbol, so I didn't know
 12 what you were referring to.
 13 Q It's not on that document.
 14 A Oh, it's on a different one?
 15 Q I was going to get it out if it had any significance.
 16 A No, it does not.
 17 Q Okay. Still on that same document, you had testified
 18 earlier that there was an issue as to whether or not
 19 the fund-raising from foundations could ever have been
 20 accomplished prior to the time of the scheduled
 21 closing under the purchase and sale agreement because
 22 of the foundation --
 23 A The time frame.
 24 Q -- because of the time frame of foundations.

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1 A Yeah, that's correct.
 2 Q In that they had to process applications within a
 3 specified period and then act on them within that --
 4 A That's right. So, he talks about bridge funding even
 5 on Page 3 of this last document that you showed me.
 6 Q If we look at Page 57, there is a reference on 57 to
 7 bridge funding, other components should be bridge
 8 funding. It says, at the top: Therefore, the fund-
 9 raising plan should be considered a component of the
 10 budget, and the other component should be bridge
 11 funding.
 12 Now, that would suggest that on February
 13 25th FORA was telling TPL that bridge funding was
 14 going to have to be a component if this was going
 15 to work.
 16 A Yeah.
 17 Q Am I correct?
 18 A Yes.
 19 MR. CONROY: Objection.
 20 MS. MURPHY: Objection.
 21 A Well, you have to just read down at the bottom of the
 22 second page. I'm sorry there's all this gobbledegook
 23 in it, but as for raising the entire amount by
 24 closing, I'm not so optimistic about that. Most

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1 foundations to which we would apply anytime between
 2 now and December would likely disburse their grants in
 3 December. So, we're talking bridge funding for
 4 possibly those few months if we could have started
 5 that fund-raising.
 6 Q Are you aware of TPL telling FORA at that point that
 7 they would not agree to any bridge funding, and that's
 8 in February, on or about February 25th of 2003?
 9 A I probably would answer that question in saying that
 10 they're saying things like they don't want to do that,
 11 they don't like to do that, but will not, I don't
 12 recall them ever saying will not.
 13 Q Do you recall reviewing any documents from TPL in
 14 which TPL identified, prior to the assignment, that
 15 they intended to rely on the liquidated damage clause
 16 and that they would have no exposure for loss because
 17 the payments to Mrs. Kunelius would come from FORA?
 18 A I don't think they conveyed that to us. That might
 19 have been their plan.
 20 Q Would it surprise you if that was in fact the case?
 21 A Not now.
 22 Q And why is that?
 23 A Because the cash outlay did come from -- did not come
 24 from TPL. I wouldn't say it came from FORA, but it

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DEPOSITION OF SERENA FURMAN

MINIDEP by Kenson

1 did not come from TPL. So, they laid out a certain
 2 amount of cash, too, right? I mean, they had a lot of
 3 hard costs, not to Ms. Kunelius directly, but they had
 4 a lot of hard costs to pay.
 5 Q Within TPL itself?
 6 A Yeah.
 7 Q For their due diligence?
 8 A Paying inspectors and, yeah, all that.
 9 (WHEREUPON, Exhibit No. 25, TPL memo to
 10 Stow project partners, dated March 18, 2003,
 11 marked for identification.)
 12 Q I'm going to put before you a document which we've
 13 marked as 25. This document is a confidential memo to
 14 the Stow project partners from TPL. Is it fair to say
 15 that since this was in your possession, FORA was a
 16 project partner that was copied with this?
 17 A I think I'm going to say I don't want to define the
 18 term partner, and I never referred to myself as a
 19 partner.
 20 Q Yourself, personally?
 21 A I don't think any one of us would view ourselves as a
 22 partner because we didn't have any say in the process.
 23 Q This appears to be TPL's financial analysis. It says:
 24 As we continue to assemble the various moving parts

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1 necessary to keep this complex project moving forward,
 2 it seems prudent for us to analyze the financial
 3 components of this project in greater detail.
 4 Have I read that correctly? I'm sorry. And
 5 to plan how to manage all of them appropriately,
 6 period. Is it fair to say that this two-page
 7 document was the first financial analysis that
 8 TPL shared with FORA? And I note it's dated
 9 March 18th.
 10 A I can't say that this was the first one.
 11 Q Does it strike you that it was prudent to do such an
 12 analysis virtually a month after the acceptance of the
 13 right of first refusal, or would you have expected
 14 this analysis to have occurred first?
 15 MS. MURPHY: Objection.
 16 A I seriously doubt that this was the first one that
 17 they ever did, and, also, you have to look at the fact
 18 that there's some things in here like the DHCD grant
 19 which probably was not even in the play, in play, when
 20 they took on the assignment. So, they had to
 21 reconfigure, you know, their program.
 22 Q And you're referring to the DHCD grant referenced on
 23 the first page of this Exhibit 25 in the box?
 24 A Right.

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1 Q And it refers to a DHCD grant of zero to 200.
 2 A Right.
 3 Q Do you see that?
 4 A Uh-huh.
 5 Q So, it's not clear from this document that the DHCD
 6 grant was actually a necessary component as of
 7 March 18, 2003, since they have assigned a value
 8 to it of zero to 200,000. Is that fair to say?
 9 MS. MURPHY: Objection.
 10 A It's just a variable, I mean.
 11 Q Looking at the subtotal, it has 950,000. I presume
 12 that means thousand even though it says 950 to 1.15.
 13 Do you see that?
 14 A Uh-huh. That's not good math.
 15 Q Yeah, I was going to say. Can you explain to me where
 16 they get the 950,000 from the lesser amounts that are
 17 contained in Lines 3 and 4?
 18 A One to three.
 19 Q So, that's 950 there. Now, at some point, there is a
 20 reference to development of 250,000 to 550,000. Do
 21 you know what that number represents?
 22 A I'm going to guess. No, I don't know. I would assume
 23 that you would read that as a developer's cost to take
 24 those properties to sale.

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1 Q So, the budget and the analysis that they're referring
 2 to here is not specifically the budget as to how to
 3 acquire the property. It is how they will develop and
 4 sell the property that they're referring to here, is
 5 that correct?
 6 MR. CONROY: Objection.
 7 MS. MURPHY: Objection.
 8 A I think it's costs, potential costs. I don't think
 9 it's necessarily a plan.
 10 Q And do you recall reviewing it at the time on March
 11 18, 2003, or thereabouts and drawing any conclusions
 12 from your review of this?
 13 A I'm going to be diving into my papers to see what we
 14 wrote, if anything. There's that number on Page 2
 15 that you said, the 750 for closing. I see 694. So,
 16 that probably kind of confirms your question about the
 17 750 having a meaningful number, of having enough money
 18 at closing, but that's not your question.
 19 Q All right. Why don't I move on to the question.
 20 A Okay.
 21 Q On the second page, under 2. Timing and Use, under
 22 Paragraph 2, Item 2, in the first paragraph, it says:
 23 Execute a note and mortgage consistent with these
 24 terms. Both of these alternatives are problematic,

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1 the first because it requires an amendment to the
 2 original purchase and sale agreement which, as a
 3 result of the effect of Chapter 61, is difficult
 4 unless we can persuade Mosaic Commons to waive their
 5 rights under that agreement. Do you see that?
 6 A This would be the fact that they don't want to take on
 7 the property with a mortgage, correct? That's my
 8 interpretation.
 9 Q I don't know. I'm asking you if you have an
 10 understanding of that sentence, or that section that I
 11 read, as it relates -- specifically, let's start with
 12 an amendment to the purchase and sale agreement. Were
 13 you aware in March of 2003 that TPL was considering an
 14 amendment to the purchase and sale agreement?
 15 A It sounds vaguely familiar. I think the issue was
 16 that Mrs. Kunelius was going to achieve some interest
 17 over the course of this mortgage, and I believe, as
 18 far as we knew, what she was insisting upon was still
 19 earning that interest regardless of the course of the
 20 mortgage, and that was an issue. I don't remember how
 21 that got negotiated.
 22 Q And why would TPL and FORA believe that they could in
 23 any way go back and negotiate a term with the original
 24 buyer that could in any way affect the rights of

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1 Mrs. Kunelius?
 2 A I have no idea.
 3 MR. CONROY: Objection.
 4 A I have no idea what TPL thought they could and
 5 couldn't do with real estate deals. It's not my area
 6 of expertise.
 7 Q Are you aware of anyone at FORA that questioned this
 8 component of the project structure and financial needs
 9 which dealt with the possibility of getting Mosaic
 10 Commons to waive their rights under an agreement that
 11 had been assigned to TPL?
 12 A I don't recall.
 13 Q Looking at the next sentence after the semicolon, it
 14 says: The second, because TPL cannot burden the
 15 property with a mortgage, we must sell the real estate
 16 free of such encumbrances prior to the expiration of
 17 the mortgage. Have I read that correctly?
 18 A (Indicating.)
 19 Q And that's a yes? You're shaking your head.
 20 A Oh, sorry. What I recall is that TPL wanted to
 21 execute the entire project over a limited period of
 22 time, and conforming to this mortgage would have
 23 extended the project longer. They wanted to be able
 24 to go sell those houses.

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DEPOSITION OF SERENA FURMAN

MINIDEP by Kenson

1 Q Did anybody raise, at FORA, any concerns about TPL's
2 statement on March 18th that they could not burden the
3 property with a mortgage, since you have earlier
4 testified that FORA had stated on several occasions
5 that bridge financing would be necessary?
6 A Bridge financing does not affect the sale of property.
7 Q Does bridge financing burden the property with a
8 mortgage?
9 A No, because what we would imagine is that TPL's bridge
10 financing would not be tied to the property.
11 Q And did you have any understanding that TPL was going
12 to access lines of credit?
13 A They had never pointed to any line of credit that they
14 were looking at. We talked about it before, about how
15 we had found something for them to consider.
16 Q What was your understanding as to what the source of
17 money was if TPL was to provide bridge financing?
18 A They hadn't identified it.
19 Q Looking at the second paragraph, the next paragraph,
20 it says: Although not an easy path, the only
21 manageable solution is for TPL to reach an agreement
22 with Marilyn to accept a present value figure and to
23 negotiate a release from Mosaic Commons. Do you have
24 an understanding today as to what was meant by that

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1 A Well, he's definitely got a hand in it, but I'd
2 probably just say co-authored.
3 Q I direct your attention to the third paragraph, the
4 second paragraph. I'm sorry. It says: The need of
5 TPL to negotiate the present value with Marilyn and to
6 achieve a waiver from Mosaic are weighty and important
7 issues. I'm wondering what you meant by that.
8 A Here's how. I would have felt the day that this was
9 written the way I feel today, that there are nuances
10 of this project that we were unaware of and were
11 hoping that TPL would do a good job at resolving,
12 because it's pretty much beyond us to know, to
13 understand this sort of negotiation that has to go.
14 So, what we're saying, basically, if you
15 read the next, was we're here to assist you in
16 any way we can, but, clearly, that's something
17 that they have to take on, because we don't
18 really even understand it, how you can negotiate
19 that.
20 Q I truly do not know. When I ask this question, I'm
21 just going to qualify it by telling you that I don't
22 know what is being referred to here as a weighty or
23 important issue as it relates to Mosaic Commons, a
24 waiver from Mosaic Commons. What waiver are you

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1 sentence?
2 A I'm only guessing that it revolves around the fact
3 that she was expecting this interest and that they
4 wanted to negotiate something with her so they
5 wouldn't be held to the original mortgage period.
6 Q And is that the original mortgage period that was in
7 the purchase and sale agreement? Is that what you're
8 referring to?
9 A Oh, did I ever see the purchase and sale? I'm not
10 sure. I'm just assuming that it's what they are
11 saying in the first paragraph about the mortgage of
12 400,000 plus interest at seven percent over 24 months.
13 Q Well, looking at the next sentence, it says:
14 Regarding the latter, I have discussed this issue with
15 their attorney and I believe we can come to terms. Do
16 you know what attorney they were referring to?
17 A No.
18 Q It goes on: Likewise, so long as we accurately
19 present value the 400,000 -- that's actually a typo
20 there, but I think it means 400,000 -- dollar
21 mortgage, I do not believe that Marilyn will object to
22 liquidating this contract right earlier than
23 originally contemplated. Do you have an understanding
24 of what was meant there?

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1 actually talking about?
2 A Here, if we can persuade Mosaic Commons to waive their
3 rights under the assignment.
4 Q What rights under the assignment?
5 A This is where we would say we don't know what Craig is
6 dealing with, but it looks pretty difficult, whatever
7 it is that he's wrestling with here, because us going
8 in, we would just assume, if you pay the money due to
9 the seller, you've met -- you've stepped in the shoes.
10 Q That was your understanding of this?
11 A That's our limited understanding of assigning the
12 right, that it's really just a matter of, you know,
13 satisfying the owner's purchase price.
14 Q With regard to attempting to get Mosaic Commons to
15 give up a right under a purchase and sale agreement
16 that it had no rights under, since it had already been
17 assigned, in other words, Mosaic Commons had no say
18 once the exercise of the right of first refusal
19 occurred. I'm making that statement to you, and I'm
20 asking you to accept it for the time being.
21 A Okay.
22 Q Did you have an understanding as to why TPL was
23 telling FORA and others that they needed to get
24 something from Mosaic Commons?

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1 A I don't know what present value means, maybe -- I
2 don't know what that means.
3 Q The last sentence of the next paragraph reads: The
4 real question thus becomes where do these funds come
5 from. Do you recall reading that on or about
6 March 18, 2003?
7 A I must have.
8 Q Did you at any time on or about March 18, 2003, begin
9 to wonder why these questions were being asked, given
10 the fact that you believed TPL had the ability to
11 bridge finance any financing shortfall?
12 MS. MURPHY: Objection.
13 A Well, I still say there's a difference between ability
14 and whether or not that fits in the way that they run
15 their projects.
16 (WHEREUPON, Exhibit No. 13, FORA email
17 to MacDonnell, dated March 20, 2003, marked for
18 identification.)
19 Q I'm going to put before you Exhibit 13, which has been
20 marked as Furman77 and 78, and this is a March 20th
21 letter from someone since it's what you provided to
22 us. It appears to be a two-page document, and I'm
23 wondering whether you know if it was from you or your
24 husband.

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1 A I would say it must have come out of the counsel of
2 their own team at the office, of how they had to deal
3 with this issue.
4 Q I'm going to ask you to look at the next paragraph,
5 the middle of it: The cycle of giving by foundations
6 is set by individual foundation boards, their members
7 and their financial backing. We have attempted to
8 program the financing for this project based upon
9 realistic time lines of philanthropy. Wishing or
10 insisting that these time lines would become aligned
11 will not change the fact that they are not in sync.
12 FORA has been forthright with you, the town, SCT and
13 Red Acre Foundation on this point.
14 When you were talking about wishing or
15 insisting that these time lines would become
16 aligned, what are you referring to? Who's
17 wishing and who's insisting?
18 A Well, I want to review this document, because I think
19 this document is a response to this memorandum.
20 Q So, when you say this document, you're talking about
21 Exhibit 13?
22 A Yeah.
23 Q Is a response to the memorandum which is Exhibit 15?
24 A I'm just taking a look, because it's not as if other

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DEPOSITION OF SERENA FURMAN

MINI-DEP. by Kenson

1 things had occurred in between these two points.
 2 Q Well, I will note that Exhibit -- is it 15 that's in
 3 your hand -- is dated March 18th. Is that helpful to
 4 you?
 5 A And this is March 20th.
 6 Q Yes, and Exhibit 13 says: Thank you for your
 7 thoughtful memo of March 18th.
 8 A Right.
 9 Q So, I'm just pointing that out to you. Does that
 10 confirm your understanding that Exhibit 13 is a
 11 response to Exhibit 15?
 12 A Yeah. I'm just seeing if he -- I don't even see
 13 anything in here, on first glance, where he is talking
 14 about fund-raising.
 15 Q And you're looking at Exhibit 15?
 16 A Right.
 17 MS. MURPHY: I think you're talking
 18 about Exhibit 25.
 19 A Sorry, Exhibit 25. I'm looking at Exhibit 25.
 20 Q I apologize. So, every time I've referred to 15 there
 21 on this section, I meant 25. Thank you.
 22 A And now, sorry. Now I'm understanding. You asked me
 23 what development meant?
 24 Q Yes.

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1 A I think that's fund-raising. So, there's that 250 to
 2 500,000 dollar fund-raising window, but I don't see
 3 him referring to timing and use of capital.
 4 Q Well, my question is: what was the basis for your
 5 stating that wishing and insisting on these time lines
 6 to become aligned will not change the fact? Was it
 7 because there was something discussed?
 8 A I think it's this question: Where do these funds come
 9 from? It's the second to last paragraph.
 10 Q Are you guessing here or is that your --
 11 A I don't see anything else in this document that would
 12 be the response, but the problem is that he's saying
 13 that TPL has to come up with 1.154 million at closing,
 14 and the response is saying that you're going to have
 15 to do financing to bridge.
 16 Q So, at that point, is it fair to say you're not at
 17 cross-purposes, that he's identified some amount of
 18 money that he has to come up with at the time of
 19 closing? That's MacDonnell.
 20 A Uh-huh.
 21 Q And you're saying you're not going to get it through
 22 the foundations because we're not in sync with the --
 23 A I think even some of the money -- I would have to go
 24 back and look, but I think some of the money from Red

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1 Acre Foundation and Stow Conservation Trust also would
 2 be -- was released, would be released, after the
 3 closing as well. So, the bridge funding would be for
 4 that money as well.
 5 Q If you look at the next paragraph, fourth line down,
 6 beginning with, "We have asserted that the potential
 7 for fund-raising is sufficient to allow TPL to borrow
 8 short-term funds without worry," does that help you
 9 recollect that it was your expectation that they were
 10 going to borrow short-term funds, because you had said
 11 earlier you discussed that with them?
 12 A I'll tell you I've never -- I do not remember them
 13 ever saying, "We will do it; we will borrow."
 14 Q It goes on to say -- this is Exhibit 13: We have also
 15 asserted that the organizations we plan to solicit
 16 cannot be expected to make donations prior to the
 17 closing in September and, more likely, would not give
 18 until late 2003 at the earliest.
 19 A And that's the difference between fund-raising in
 20 March and fund-raising in January, because if you're
 21 fund-raising in March, you're looking at June and July
 22 reviews, and they would be disbursing the cash early
 23 the following year.
 24 Q It goes on to say: This is true of any proposal that

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1 would be submitted during 2003. The correct time line
 2 for the project is through the end of 2004 and neither
 3 TPL or FORA can control that fact. As we have said
 4 from the beginning, bridge funding is required.
 5 Did you get a sense after writing this with
 6 your husband that -- that's on March 20, 2003 --
 7 that if there was a requirement that TPL had to
 8 have a hundred percent of the funds and not
 9 borrow it, that TPL was not going to go forward,
 10 because there was no way that they could get the
 11 funds from foundations until the end of 2003 at
 12 the earliest?

MS. MURPHY: Objection.

13 Q You can answer the question.
 14 A Well, my personal logic is that they would never have
 15 accepted the assigning of the right if they hadn't
 16 already a plan in place.
 17 Q And did you determine that they did have a plan in
 18 place?
 19 A Not that they showed us, but I would assume that would
 20 be the way they would operate.
 21 Q So, your assumption is they had a plan in place to
 22 obtain those funds. That's your testimony.
 23 A I would assume that's how they would operate as a non-

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1 profit, is that they would run the numbers, so to
 2 speak, before they dove in.
 3 Q But it is also your testimony that they never actually
 4 showed you what that plan was in place at the time
 5 that they accepted the right of first refusal?
 6 A No, they did not share with us all the inner workings
 7 of the organization. Time to time they did, but it
 8 wasn't -- we didn't expect them to.
 9 Q Looking at the last line of the first page of Exhibit
 10 13, it says: This is an unworkable plan. Referring
 11 to -- why don't I start that paragraph: You expressed
 12 the desire of TPL to sell the horse farm to EOS and
 13 implied exclusion of EOS from the horse farm if they
 14 did not buy the property from TPL prior to September
 15 of 2003. Can you tell me how EOS -- that's Eye of the
 16 Storm?
 17 A Uh-huh.
 18 Q -- could buy the property from TPL prior to TPL
 19 acquiring the property from Mrs. Kunelius?
 20 A Sounds pretty illogical. Maybe the implication there
 21 is that they would put together all of the finances on
 22 paper for them to show their ability, which they
 23 didn't have the ability to do that.
 24 Q Are you guessing at that?

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1 A No, I know that.
 2 Q Are you guessing that that's what they were meaning
 3 when they wrote this?
 4 A I think so. I think they wanted to go to closing with
 5 that chunk of the cash in their hand.
 6 Q So, I note that the word buy is in quotes. Does that
 7 help? Does that help you clarify that position? Do
 8 you see that?
 9 A Yeah. I'm sorry. What's the question?
 10 Q Does that help clarify your position that they weren't
 11 actually talking about buying it but that they had to
 12 have the documents and the funding in place?
 13 A That's right, but the problem is that TPL had to
 14 participate in the fund-raising to raise the money.
 15 So, that would be the next few sentences.
 16 Q Well, it goes on to say: This is an unworkable plan
 17 and the position of FORA on this has also been
 18 consistent from day one. The onus rests on TPL,
 19 working cooperatively with FORA, in order to raise the
 20 funds on the EOS purchase.
 21 A That's right.
 22 Q EOS has no assets to borrow against and has stated
 23 unequivocally and repeatedly that they will not take
 24 on a mortgage.

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DEPOSITION OF SERENA FURMAN

MINIDEP by Kenson

1 Now, you used the words unworkable plan on
2 the first page of Exhibit 13. Did you have a
3 sense at that point that TPL was proposing plans
4 that could not succeed?
5 A I think that I don't really like that question, so.
6 Q And as much as I appreciate the fact that you don't
7 like --
8 A Yeah, because, I mean, I think that, as you work
9 through many plans, you find faults in the plans. I
10 don't think they were intentionally putting out a plan
11 that wouldn't work. Is that what you were saying in
12 your question?
13 Q Well, if you continue to read that paragraph, tell me
14 whether you think that you were saying that TPL was in
15 fact proposing something that would prevent the
16 entire --
17 A What TPL was trying to do was divorce themselves from
18 the fund-raising responsibilities for the equine
19 rescue component, which is not -- doesn't work.
20 Q Let's look at what it goes on to say. It says: Like
21 it or not, TPL and FORA are helping EOS become a full-
22 fledged non-profit in the course of this project. We
23 cannot force them to be something they are not and the
24 political and financial implications of excluding them

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1 Q I want to just look at the second to the last
2 sentence, beginning, or the third to the last
3 sentence: We pledge neither our support for nor our
4 opposition to your exit strategy. Do you understand
5 what that means?
6 A Well, the problem is this goes back to the -- this is
7 the different -- hang on one second. This is when
8 they move away from equine rescue and doing
9 development of the two properties and maybe even the
10 reduced asking price to Marilyn, and everything we've
11 done as a neighborhood organization has to be all of
12 these components. Once you get rid of one -- we can't
13 be representing anybody anymore. So, that's what
14 we're saying.
15 Q You had testified earlier that FORA had not broken
16 ranks with --
17 A Publicly.
18 Q Publicly. Was this decision not to break ranks until
19 this litigation reflected in the statement that we
20 neither pledge our support for nor opposition to your
21 exit strategy?
22 MR. CONROY: Objection.
23 MS. ECKER: Objection.
24 THE WITNESS: Well, I want to know why.

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1 at this point would be catastrophic. Are you
2 referring to it being catastrophic to the project, to
3 the acquisition of this property from Mrs. Kunelius?
4 A Well, you have to look down at Red Acre Foundation.
5 That's \$100,000 of that, and that is for Eye of the
6 Storm. It's not for anything else. That money is
7 earmarked for their piece of the puzzle. So, that's a
8 big chunk of cash pulled out of the project right
9 there.
10 Q So, answering the question that I asked, if TPL were
11 to force Eye of the Storm out, isn't it fair to say
12 that the loss of Eye of the Storm would be the
13 simultaneous loss of Red Acre Foundation funds in the
14 amount of \$200,000?
15 A It was a hundred thousand at this point. They were
16 thinking of going up, but at this point, as you can
17 see, it's only a hundred thousand, and Black Creek as
18 well. That's another one that's identified for them.
19 Q And how much is Black Creek?
20 A That's just twenty.
21 Q So, is that what you're referring to when you said
22 that the financial implications of excluding EOS would
23 be catastrophic?
24 A Well, it's a dramatic word to use, but it had a lot to

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1 MR. McLAUGHLIN: No, that's all right.
2 You can answer the question.
3 MR. CONROY: You don't get to know.
4 THE WITNESS: Dam.
5 A I guess taking a neutral position was our goal.
6 Q At some point, did FORA believe it needed counsel in
7 this matter as it related to TPL?
8 A I don't recall.
9 Q Do you recall that there was an agenda for the final
10 meeting with TPL that was put together?
11 A We talked about that before. Did that surface in
12 anybody else's documents?
13 Q No.
14 A Because we couldn't come up with a paper for that.
15 Q But you don't recall the specific need of FORA hiring
16 counsel?
17 A Not that I recall.
18 (WHEREUPON, Exhibit No. 17,
19 Christianson letter to MacDonnell, dated
20 September 11, 2003, marked for identification.)
21 Q This is a document that's been marked 108, -9 and -10.
22 It's a letter from you, Draft No. 2, and it has a date
23 of 9-11-03, and I want to ask you -- never mind. I'm
24 not going to use that.

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1 do with the first major breaking up of the plan.
2 (WHEREUPON, Exhibit No. 16,
3 Christianson letter to MacDonnell, dated 8/6,
4 marked for identification.)
5 Q I'm putting before you a document which has been
6 marked Exhibit 16, and I'd have you take a look at
7 this. This is a document you supplied to us. It's
8 got Furman96 and 97 on the bottom.
9 A We looked at this the last time, I think.
10 Q Yes. I just have a quick question on this, well, a
11 couple of quick questions. Is this from you or your
12 husband?
13 A This is the letter that I spoke to before. We don't
14 believe this was sent, and this is definitely my
15 husband.
16 Q And you don't believe this has been sent?
17 A I showed it to him and he looked at it, and he said,
18 "You're probably right," because if you go down to a
19 week later, there's a very, very nice letter to Craig.
20 So, this is the one like you've got to be crazy. I
21 don't care how mad you are. We're not sending this
22 letter. I mean, TPL's correspondence may prove me
23 wrong, but that's the only thing that makes sense to
24 me.

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1 (WHEREUPON, Exhibit No. 26, FORA letter
2 to Perry, dated September 30, 2003, marked for
3 identification.)
4 Q Quick question on this, because I think we discussed
5 this earlier, but this has now been marked as Exhibit
6 26. I direct your attention to the first full
7 paragraph. About the middle of the paragraph on the
8 right-hand side, it says: This communique was sent
9 unilaterally by TPL.
10 I'm going to stop again and just identify
11 this. It appears to be from you and your husband
12 and others to Ross Perry, and it says: This
13 communique was sent unilaterally by TPL without
14 our knowledge. We find it disheartening that
15 Craig did not mention it to any of us at the
16 meeting on the 24th. As Craig stated in the
17 meeting, he has been trying to -- quote -- either
18 push the project along or kill it for quite some
19 time. End quote.
20 A I remember you asking about this before.
21 Q Now, I want to ask you again about the quote,
22 specifically.
23 A Yeah.
24 Q Do you recall how Craig MacDonnell said he had been

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MINIDEP by Kenson

1 trying to kill the project for some time?
 2 MR. CONROY: Objection.
 3 A No. I don't even recall who came up with that quote
 4 among the authors of this.
 5 Q Okay. Last question, as far as I'm concerned anyhow,
 6 is, when you met with Patty Murphy, did you receive
 7 any advice or suggestions concerning how you should
 8 prepare for this deposition?
 9 A No.
 10 Q Did you receive any instruction or direction as to
 11 what testimony you should give?
 12 A No.
 13 Q At any time, did Ms. Murphy describe to you the
 14 position that TPL was taking in this litigation?
 15 A No.
 16 Q So, your recollection of her discussion with you,
 17 specifically, was what?
 18 A It was why don't you tell me how you recall the
 19 project going forward. So, I basically talked.
 20 MR. McLAUGHLIN: I have no further
 21 questions. Thank you.
 22 MR. CONROY: I'm going to have some.
 23 This may be a good time to take a 10-minute
 24 break.

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1 Q The last one you mentioned about the horses, what was
 2 her response to that?
 3 A No, thank you. I don't need any help.
 4 Q And was that the extent of it?
 5 A Uh-huh.
 6 Q What about the dog? What was the answer to that?
 7 A She said she'd let the -- I think it was a renter's
 8 dog and she said she'd let him know, thank you. It
 9 was kind of a young puppy and it just needed to be
 10 under better guard.
 11 Q And then what was the first one? I forgot.
 12 A The first one was we had some sort of confusing
 13 information in our neighborhood as to whether or not
 14 Marilyn minded if you were on her property or not, and
 15 so when we -- somebody had told us quite clearly that
 16 we could go just up her driveway and down a trail and
 17 she wouldn't mind, and she came out, and she did mind,
 18 and I was very apologetic, and I wrote her a letter,
 19 sorry. Sorry, I'm not going to walk on your property.
 20 Q And did she, as you understood it, object just to your
 21 being on the property as opposed to --
 22 A Perhaps not calling in advance. So, I completely
 23 understood her at that time.
 24 Q Did you ever make any changes in the topography of

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1 MR. McLAUGHLIN: Sure.
 2 (Recess, 6:20 P.M.)
 3 (After recess, 6:28 P.M.)
 4 CROSS-EXAMINATION
 5 By MR. CONROY:
 6 Q Ms. Furman, my name is Jim Conroy. We met before at
 7 your last deposition, and I represent Craig
 8 MacDonnell. I'm going to have a few questions as
 9 well.
 10 First of all, let me ask you, do you have
 11 any fund-raising experience of your own as
 12 opposed to your husband's experience?
 13 A I have written components of grants for Museum of Our
 14 National Heritage and for the New England Aquarium. I
 15 have produced -- usually, the parts that I produce are
 16 closely related to my profession, which is exhibit
 17 design.
 18 So, I would be working with the funders, but
 19 I would be doing the sections that describe the
 20 exhibits or renovations, et cetera, for larger
 21 funding, and then, also, we did some federal
 22 funding for operations, which is a big, big
 23 project, at the National Heritage Museum, and I
 24 wrote quite a few pieces of that, but I was not

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1 Ms. Kunelius' property, cut any bushes or --
 2 A No.
 3 Q -- open a path or anything of that kind?
 4 A No.
 5 Q Cut down any tree limbs, anything like that?
 6 A No.
 7 Q Any other conversations with her that you can recall?
 8 A Well, she was at the hearing for -- Mosaic Commons ran
 9 an open session to talk about the project, which she
 10 was at. I don't remember talking to her,
 11 specifically, but we might have said something there.
 12 I know she was having a few conversations with the
 13 woman who is Eye of the Storm, Nina Arbella, and
 14 sometimes I got that secondhand, and then she called
 15 me recently to, you know, give me Michael's name, and
 16 I'm trying to remember if there was anything else.
 17 Well, then we went and we talked about a
 18 possible -- two different times we went to talk
 19 to her about -- after Craig had left. One was
 20 trying to make good on a reduced price that we
 21 felt we could manage at that time, and then,
 22 again, I think my husband contacted Jim Boothroyd
 23 about even just purchasing a small portion of her
 24 property that was in wetland.

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1 the organizer of the funding efforts. But I
 2 contributed.
 3 Q In addition to that, have you acquired some knowledge
 4 of fund-raising from your husband as well?
 5 A Osmosis, yeah. Osmosis, definitely.
 6 Q Were you ever hired to raise funds for any institution
 7 or person?
 8 A No.
 9 Q Have you had any conversations with Marilyn Kunelius,
 10 first of all, about anything at any time?
 11 A Let's see. Yes, I had one about asking her if I could
 12 walk on her property. I had one about a dog nearly
 13 getting hit that came running off her property in
 14 front of a truck.
 15 Q Okay. Let me just slow you down a little bit.
 16 A Sort of neighborhood things. I've called her up and
 17 said, "I'm your neighbor. I know a lot about horses.
 18 If you have an emergency, please call me. I can come
 19 handle horses if there's a problem."
 20 Q All right. Let me just slow you down a little bit.
 21 A Sure.
 22 Q And we don't need a lot of depth, but let's start from
 23 the back.
 24 A Yeah.

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1 Q I'll come to that separately.
 2 A Is there something else that I'm forgetting?
 3 Q I have no idea. I'm asking you.
 4 A Oh, okay. I don't know if she had mentioned something
 5 to you. But she's sort of a silent neighbor rather
 6 than a neighbor I've been actively engaged in.
 7 Q Is that the extent of your memory about conversations
 8 with her?
 9 A Yes, I think so.
 10 Q Did you ever hear anything to the effect that
 11 Ms. Kunelius was hoping that the deal for the
 12 purchase of her land would fall through so that
 13 she could bring a lawsuit and get triple damages
 14 for it?
 15 A I may have heard something like that secondhand.
 16 Q I'll say, in fairness to you, that a document was
 17 marked in Ms. Sommerlad's deposition referring to such
 18 a comment.
 19 A Through her barn manager?
 20 Q Right.
 21 A Right.
 22 Q What did you hear about that?
 23 A Just what Karen had said, that she had heard from --
 24 was Trish Polin her name -- that she was hoping that

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1 the deal would fall through because she wanted to sue.
 2 Q But you have no other knowledge of that?
 3 A Just through that contact. I don't know if I heard it
 4 again through Nina Arbella. I don't know if I heard
 5 it again through -- I don't know who else would have
 6 had a connection with Marilyn. There was a woman
 7 across the street who had a horse. They talked, but
 8 she never talked to me directly.
 9 Q What has that got to do with that?
 10 A Well, that Marilyn may have talked to her, and then
 11 she may have talked to Nina, and so this sort of
 12 second- and third-party. So, I don't know if I heard
 13 it more than once.
 14 Q Now, you say that she called you and gave you
 15 Mr. McLaughlin's name?
 16 A Correct, because she wanted -- she said that he wanted
 17 to get in touch with me.
 18 Q And other than that, did she say anything further?
 19 A She said that she was loving living up in Stow with a
 20 population of four hundred people.
 21 Q Anything else?
 22 A She said she was going to come to these, that she
 23 wanted to come down to these meetings and she was
 24 trying to get all of the Friends of Red Acre people,
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1 Karen and whoever else that wanted to be talked to,
 2 come together, because she obviously didn't want to
 3 make a lot of trips.
 4 Q By meetings, you mean the depositions?
 5 A I don't know, because at that time I didn't know the
 6 process, and, obviously, I met with Patty and that
 7 wasn't a formal deposition.
 8 Q Do you recall anything else that you said in that
 9 conversation?
 10 A No.
 11 Q Now, I understand you spoke to Mr. McLaughlin. You
 12 said you did.
 13 A Yeah, we talked on the cell phone first.
 14 THE WITNESS: Though I think you did
 15 most of the talking or kind of running through
 16 the project.
 17 Q Okay. Let me just keep the record clean, because it
 18 doesn't reflect you, okay.
 19 A Oh, got it.
 20 Q Tell me, how many times did you speak with
 21 Mr. McLaughlin on the telephone?
 22 A Once.
 23 Q Just once. And how long did you speak with him?
 24 A It was about 20 minutes.
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1 Q When was that?
 2 A I don't have my calendar, darn it.
 3 Q Roughly.
 4 A It was roughly, I would say, four days before I met
 5 with Patty.
 6 Q And tell me as best you can the substance of that
 7 conversation.
 8 A I think he was running through, basically, in reverse.
 9 As I was doing a chronology of the project, he was
 10 doing a chronology of the project to me on the phone,
 11 not really asking me questions or anything.
 12 Q So, you mean to say that he was recounting to you his
 13 understanding of these events?
 14 A Based on the limited information he had at that time,
 15 that this happened and this happened and this
 16 happened.
 17 Q More as a narrative than as question and answers?
 18 A Right, right, not a question and answer thing.
 19 Q Was he asking you whether these things were correct or
 20 incorrect?
 21 A I think I do recall one question where he was asking
 22 who were the major funding sources, and I said I
 23 couldn't quite recall at the time.
 24 Q As you listened to him give this narrative to you, did
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1 you understand him to be recounting it accurately as
 2 you recalled it?
 3 A Boy, it seemed to me there were one or two points, but
 4 I think, more or less, it was accurate.
 5 Q Do you recall what the one or two points were?
 6 A I'm not quite sure they were wrong, but then I had to
 7 clarify, you know, did this happen before or after the
 8 assigning of the right, or was this right before town
 9 meeting, or was there a need to, say, encourage TPL
 10 after the -- I don't really recall, something about
 11 there was a moment, and it made sense when I put it in
 12 context of time, such as, oh, well, that was right
 13 after the town meeting vote, voted against -- not the
 14 town meeting but the vote at the polls went against
 15 the project.
 16 Q So, you were correcting chronology?
 17 A Oh, I think he had the chronology straight, but in my
 18 own mind, as he was making -- do you know that this
 19 happened, and I had to kind of go, well, wait, that
 20 was after the vote in the polls. So, I don't recall
 21 anything that was inaccurate.
 22 Q Do you recall anything notable about anything he said
 23 in that conversation, anything that surprised you?
 24 A I think he brought up the fact that TPL had this
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1 gigunda line of credit. I'm sorry, but I don't
 2 remember the number, that had been written into the
 3 DHCD grant, which I never read the entire document.
 4 So, I mean, I think he -- he did ask a
 5 question: Did you think that TPL could cover
 6 these kinds of expenses? And I said, well,
 7 enough of us are non-profits that we know how to
 8 look at Web sites for non-profits, and we can see
 9 that they have a good, strong bottom line, so I'm
 10 not surprised. I didn't know that they had this
 11 specific line of credit with some bank, but by
 12 looking at their Web site and understanding the
 13 organizational structure, I'm not surprised.
 14 Q Do you know whether your husband spoke to
 15 Mr. McLaughlin?
 16 A He has not, I don't believe.
 17 Q You have said, as I recall it in your last session,
 18 that you and your husband were willing to come up with
 19 six figures by way of a loan, if need be, to try to
 20 make this deal work. Do you remember that?
 21 A Uh-huh.
 22 Q Yes or no, you have to say.
 23 A Yes, I do remember that, and I went home, and he does
 24 have the breakdown of that offer, but he didn't think
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1 it related directly to this lawsuit, so he didn't give
 2 that to me, but we do have that if you're interested.
 3 Q Okay. Let me come to that. But my question is: what
 4 are your motives in this situation? Why would you be
 5 willing to do that?
 6 MR. McLAUGHLIN: Objection.
 7 A Well, I feel that it was -- we were still trying to do
 8 the right thing by Ms. Kunelius and by the town.
 9 Q Put a different way, I suppose, are you still hopeful
 10 that the land will be conserved, that something can be
 11 done to preserve it?
 12 A The land is what it is, which is it's very wet. So, I
 13 don't imagine the large part of it ever being
 14 developed. My main goal was to augment the project by
 15 allowing it to remain as a horse farm and fulfill the
 16 needs of Eye of the Storm.
 17 Q With respect to this question that has come up so far
 18 in this deposition of Craig asking you or telling you
 19 not to raise anymore money, do you understand the
 20 issue that I'm referring to?
 21 A Well, that TPL was not going to begin raising money
 22 with foundations, right.
 23 Q But this is a little different question. Do you
 24 recall Craig ever saying to you that he didn't want to
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DEPOSITION OF SERENA FURMAN

1 see anymore money raised for this project?
 2 A That wouldn't be the correct way to put it, because if
 3 we had a bunch of millionaire friends that we could go
 4 and get money from, there would be no stopping us, but
 5 the funding strategy that we had was through TPL's
 6 office. They had to write the -- they had to send
 7 them out.
 8 Q But did Craig MacDonnell ever tell you, "Don't raise
 9 anymore money for this project?"
 10 A How to put this. The problem with your question is
 11 that until TPL knew that the deal was something that
 12 could go forward, they didn't want to exact promises
 13 from foundations that they would have to then say, oh,
 14 I'm sorry. The project's not going to go forward.
 15 To go out and further try to identify
 16 individuals that would be willing to make a
 17 promise of a donation, no, I don't believe he
 18 ever asked us to stop, but that wasn't really
 19 what we were there to do. We were there to write
 20 the grant. So, it was a problem with the project
 21 being unresolved for so long that was really a
 22 major problem for TPL.
 23 Q I wrote down, and I'm not guaranteeing that I got this
 24 right, but I took a note the last time you were

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1 deposed, ten days ago or so, that said: Craig does
 2 not usually express himself abruptly.
 3 A Oh, that was the cut it or kill it or save it or --
 4 Q Yeah. Can you expand on that a little bit based on
 5 your interactions with Craig?
 6 A He's very professional. He's not -- he doesn't do
 7 things that are -- you know, it's like the real
 8 professional who knows -- and a lot of people,
 9 frankly, in my office don't know this -- that they
 10 have to conduct themselves the same whether they're on
 11 the job or off the job, and he's very uniform in his
 12 behavior.
 13 Q Which was what?
 14 A Even, calm, not personal, not vindictive, but, you
 15 know, he could be forceful, because he's trained as a
 16 lawyer, so he could be forceful, but it's not really a
 17 tool that you use in the field that he's in right now.
 18 Q Did you ever see him lose his temper and behave
 19 inappropriately in any way?
 20 A Well, we talked about the meeting at his house, and
 21 everyone gets a little testy, but I don't think -- he
 22 never did anything that was insulting.
 23 Q Were you at a meeting at Mr. Boothroyd's office?
 24 A Several. The one with Kachajian?

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1 Q Right.
 2 A Was he there as well?
 3 Q Well, let me ask you. Do you remember a meeting that
 4 you attended that Mr. Kachajian attended and
 5 Mr. Boothroyd?
 6 A I think that was the one where Craig was offering the
 7 lower price, and at that point, you know, I believe
 8 Eye of the Storm was off the table at that point, and
 9 my husband and I were there because we still wanted to
 10 see something happen in a positive way, but the whole
 11 Friends of Red Acre was not an element anymore.
 12 Q As an institution or as a group.
 13 A Exactly.
 14 Q But you as individuals were interested.
 15 A We were interested in seeing something go forward.
 16 Q And did you perceive at that meeting that an effort
 17 was being made by both sides to try to make something
 18 happen, or not?
 19 A Well, I don't think that -- I think the offer was
 20 accepted, I mean, not accepted like, yes, we want it,
 21 but they did not respond to the offer at the table as
 22 I recall. They just took it and said, "We'll get back
 23 to you."
 24 Q Do you remember anything happening at that meeting

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1 that was indicative of misbehavior on anybody's part?
 2 Well, again, nothing too memorable. I remember
 3 thinking that Mr. Kachajian was a little bit somewhat
 4 of a rough and ready kind of guy. I don't know if
 5 maybe he expressed himself in some way. I don't know.
 6 Q Anything else?
 7 A No.
 8 Q Now, I've got a few questions on documents here, and
 9 this is where I'm going to ask Lucie --
 10 MR. CONROY: I'm sorry. I don't know
 11 your last name, Lucie, or I'd use it, but --
 12 MS. DeBELLIS: Yeah, that's okay. Go
 13 ahead.
 14 MR. CONROY: Okay, ask you to help me
 15 with some of this, and I'm going to try to do
 16 them in the order in which they showed up in the
 17 document production. This first one is this,
 18 January 19, 2003.
 19 MS. DeBELLIS: That hasn't been marked.
 20 MR. CONROY: That's not been marked,
 21 okay.
 22 MS. DeBELLIS: Would you like to use
 23 ours?
 24 MR. CONROY: Thank you, but I have my
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1 own. Would you mark that, please, as the next
 2 document?
 3 (WHEREUPON, Exhibit No. 27, FORA fund-
 4 raising prospects, dated January 19, 2003, marked
 5 for identification.)
 6 Q Do you have 27, Ms. Furman?
 7 A Yes.
 8 Q Take a moment, please, and look that over. Everything
 9 I'm going to be showing you, by the way, is among what
 10 you've already given us, so.
 11 A Okay, but I have not committed this stuff to memory.
 12 Q I understand.
 13 A Have not been doing my homework.
 14 Q Just want you to know there's no left hooks coming
 15 here.
 16 A Okay.
 17 Q Really, the only thing I'm interested in is the
 18 attachment with the foundations on it.
 19 A The prospects?
 20 Q Yeah. Are you oriented to it?
 21 A Uh-huh.
 22 Q Do you know who prepared this?
 23 A My husband.
 24 Q And the word guestimate is used as a column on the far
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1 right end. Do you see that?
 2 A Uh-huh.
 3 Q Do you know what these guestimates were based upon?
 4 A Sure. Each foundation has a certain amount of
 5 information provided on these sites, such as Small
 6 Book and Associated Grant Manager, and what you do is
 7 you can see their range of -- you can either see the
 8 range of giving that they do per year. They may say
 9 we give between 10,000 and 200,000, or they might
 10 simply say we give out this much money every year.
 11 So, you take that number. Say it's
 12 \$200,000. And you have to look at the type of
 13 things that they support and make an estimate of
 14 the correct ask for that organization.
 15 Q So, this is the amount that was expected to be
 16 requested of them?
 17 A Yes.
 18 Q As opposed to any projection that they would give
 19 these amounts.
 20 A These were reasonable requests. That's possible. You
 21 don't know until you make the ask, I'm afraid.
 22 Q So, to sum up, these were the amounts that your
 23 husband was planning on asking for from these
 24 institutions, correct?
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MINIDEP by Kenyon

1 A Uh-huh. And I think I was just reading in back that,
2 ideally, you shoot for 10,000 and up to make your
3 bullets effective. If you read back a couple of
4 pages, the minimum grant request should be ten
5 thousand.
6 Q But there are several fives in here.
7 A So, you can resort to those if you have to, but you
8 focus in on the 10,000 and up first.
9 Q I'm just curious as to, what is it, about the eighth
10 one down, EDEY, E-D-E-Y?
11 A Uh-huh.
12 Q There appears to be a zero there. Do you know why
13 EDEY would be there at all if the guesstimate was a
14 zero?
15 A Good question.
16 Q You don't know?
17 A I don't know why it would be zero.
18 Q Is this the list, by the way, of potential donors that
19 your husband was upset about, thinking that --
20 A Well, is this the list that he took down to TPL or is
21 this the final list? I'm not sure.
22 Q So, you don't know?
23 A I don't know if this is the list.
24 Q Okay. You can put that one away. This next one --

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1 2003. Wait a minute. That's 2002. That must be a
2 typo.
3 Q Well, you're trying to date this simply by the order
4 in which you --
5 A Well, my husband told me that this was in
6 chronological order.
7 Q Okay. Let me just get the record clean, because
8 you'll find that if the record isn't precise, it's
9 confusing.
10 A Yes, yes.
11 Q What you're trying to do, as I understand it, is look
12 at the sequence in which this document appears in the
13 collection you brought and trying to determine from
14 that --
15 A Roughly, right.
16 Q -- where its chronology fails.
17 A Yeah, and where it would have lined up with is
18 providing things to the fund-raising team at TPL.
19 Q Now, to the introduction, that first paragraph, the
20 last two sentences, quote: The total cost of the
21 project is 1.5 million. To date, we have raised over
22 one million.
23 First of all, do you know how it came to be
24 1.5 million as opposed to 1.3, which is --

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1 MR. CONROY: Do you have that one?
2 MS. DeBELLIS: I just pointed out that
3 the document designated as Furman27 is partially
4 also Exhibit 8 and 9.
5 MR. CONROY: I see, okay.
6 MS. DeBELLIS: Because we did not
7 staple them together.
8 MR. CONROY: I see, fair enough. Do
9 you have this one?
10 MS. DeBELLIS: No.
11 MR. CONROY: Mark that, please, as 28.
12 (WHEREUPON, Exhibit No. 28, FORA
13 conservation project plate, marked for
14 identification.)
15 Q I'm going to put 28 before you, and, first of all, can
16 you tell us what this is?
17 A This is a project plate. For this project, there
18 would have been three plates written. There would
19 have been one directed toward foundations that fund
20 conservation, there would be another one written for
21 foundations that support equine rescue, and there
22 would be a third one that would be for affordable
23 housing. A lot of the information would be the same,
24 but, some, there would be some shift in focus.

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1 A No, I don't.
2 Q -- what we spoke about earlier? You don't. And then:
3 To date, we have raised over one million. Do you know
4 what that refers to?
5 A Well, again, I'll just have to refresh my memory by
6 looking at documents of a similar time frame.
7 Q Well, let me ask you. Was there ever a time when you
8 raised one million dollars?
9 A In-hand?
10 Q Right.
11 A No.
12 Q So, I'm trying to understand what that refers to. Can
13 you help us with that?
14 A It could be something as generic as that you put
15 numbers in here and then you change them when it goes
16 out based upon what the status of the project is. The
17 numbers are just, you know, lump numbers that would be
18 changed out when you actually issued it. So, those
19 numbers would be a moving target over time as you sent
20 these proposals out.
21 Q So, this might just be a template number that's just
22 plugged in?
23 A Might be. We seem to have something from January 19th
24 that says we have total commitments of 866,000, but I

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1 Q And what's a plate?
2 A Same as a boilerplate, which is a base document that
3 you create, and then you take this and you take each
4 foundation's demands and you tweak it.
5 Q Got it. Who wrote it?
6 A Probably my husband.
7 Q On the second paragraph of the first page under the
8 heading The Need, do you see that?
9 A Yeah.
10 Q This describes the property, correct?
11 A Uh-huh.
12 Q This is the kind of thing that would be boilerplated
13 in all of these proposals?
14 A Well.
15 Q Or potentially, I guess, it might be different based
16 on --
17 A It might be slightly different. In fact, you know,
18 the horse farm piece might be beefed up for one and --
19 Q Got it. Take you back to the first paragraph, the
20 introduction, and before I ask the question, do you
21 know when this was written?
22 A Well, I have it in sequence, and it follows a January
23 19th project budget, and this is January 5th. So, I
24 would say this is an early to mid-January document of

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1 don't see an itemization if it.
2 MR. CONROY: This will be No. 29. I'd
3 ask the stenographer to mark that, please.
4 (WHEREUPON, Exhibit No. 29,
5 Christianson handwritten calculations, marked for
6 identification.)
7 Q Do you have that?
8 A Yes.
9 Q Do you know what that is, No. 29, Exhibit 29?
10 A Peter running some numbers.
11 Q But that's your husband's writing, you think?
12 A Yes, it is.
13 Q And the copyright thing is another joke or a habit --
14 A It is a joke.
15 Q -- that started as a joke?
16 A It's a joke.
17 Q Do you know what the references to 400K land and 100K
18 well refer to?
19 A Uh-huh, I mean, unless there was some further
20 conversation with the town about, you know, an
21 interest in the well, developing a well as a separate
22 line. I thought there was something in the CPC grant
23 that prevented that use, but I don't know.
24 MR. CONROY: Mark this as No. 30,

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MINUTE by Kenson

1 please.
2 (WHEREUPON, Exhibit No. 30, Kunelius
3 letter to editor, dated February 27, 2003, marked
4 for identification.)
5 Q Do you recognize that?
6 A Uh-huh. Yes, I do.
7 Q Did you read this letter to the editor by Ms. Kunelius
8 at the time it was published?
9 A Yes.
10 Q What did you make of it at the time?
11 A I thought that she has irony in her personality. I'm
12 not quite sure she's helping the voters to figure out
13 whether to vote yes or no, a bit confusing, but she
14 was trying to, you know, trying to dissuade the public
15 from going along with the project.
16 Q And what did you make of that?
17 A Well, now that I see that owners quite routinely
18 aren't happy with the assigning of a right of first
19 refusal, because it's happened more than once, I was
20 surprised. I would have thought owners would be
21 interested in getting money and that they would be
22 done with it. So, it was a disappointment to us that
23 we had to battle the owner on this.
24 Q Do you recall being involved in any way in an effort

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1 to campaign for the town to support this
2 appropriation?
3 A We did a town-wide mailing, and in order to do so, we
4 had to register for a short period of time, and I know
5 that Marilyn did a town-wide mailing as well, but I
6 don't know if she also had to go through the
7 registration process. But she sent around a postcard.
8 We did a phone -- we did phone marathons, where we
9 called up people and asked their opinions.
10 Q And as a result of all of that, did you perceive that
11 Ms. Kunelius was endeavoring to persuade the voters to
12 oppose this appropriation?
13 A Yes.
14 Q Do you have any sense of how much, if any, influence
15 she had in that regard?
16 MR. McLAUGHLIN: Objection.
17 A I don't know.
18 MR. CONROY: Would you mark this next
19 one, please, as 31?
20 (WHEREUPON, Exhibit No. 31,
21 Christianson letter to Kunelius, dated February
22 19, 2004, marked for identification.)
23 Q Take a look at that, please, and just let me know when
24 you've oriented yourself to that.

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1 A I forgot about that, because my husband ran into her
2 at Emerson. She was visiting her father and he was
3 having treatment.
4 Q Just review it, please, if you would, and then I'll
5 ask you some questions.
6 A Uh-huh.
7 Q Now that you've read it, do you recall the letter?
8 A Yeah.
9 Q And what was the purpose of this letter?
10 A We wanted to make an offer to buy the swamp directly
11 behind our house.
12 Q And was this letter the first overture that you made
13 in that direction?
14 A I believe so.
15 Q Did you receive a response?
16 A I believe that -- that's hard to say. Either Jim
17 Boothroyd called back and said that she wasn't
18 interested or there was no response, but nothing went
19 forward.
20 Q You don't recall any substantive response, other than
21 perhaps silence?
22 A I don't recall.
23 MR. CONROY: This would be 32, please.
24 You don't have that one marked, do you?

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1 MS. DeBELLIS: No.
2 THE WITNESS: Oh, I see.
3 MR. CONROY: She has to mark it first.
4 (WHEREUPON, Exhibit No. 32, Christian
5 letter to Boothroyd, dated August 2, 2005, marked
6 for identification.)
7 Q Take a look, please, at No. 32, Exhibit 32, and let me
8 know when you've reviewed that.
9 A Okay. Quite a bit of time lapse between the two.
10 Q Right. Have you read it?
11 A Uh-huh.
12 Q Do you remember seeing that at the time it went?
13 A No, but he probably told me about it.
14 Q As you see, the first letter is February 19, '04, and
15 this one is August 2, '05. Does that refresh your
16 memory as to any activity that might have been going
17 on in that period of time regarding the possibility of
18 your buying this property?
19 A No, I don't. I don't recall.
20 Q And do you recall or do you know whether any response
21 was ever made to this letter?
22 A Again, I don't think there was any response to it or
23 any number, not to the point where even they came back
24 with a number that they were interested in.

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1 Q So, as far as you know, this never went anywhere?
2 A Did not go anywhere. We're still interested, though.
3 We have a reason for being interested, because our
4 property, technically, if we did that, we could then
5 say our property abutted conservation land, which it
6 does not now. There's a little swath of floating
7 water, nothing that she could ever use. In fact, the
8 vernal pool that I certified is on both of our
9 properties, but, technically, we could claim that we
10 abutted conservation land if we got that property from
11 her.
12 Q Do you recall whether any specific offer was made by
13 you and your husband for this property?
14 A For the entire parcel?
15 Q For the acre that you were interested in.
16 A I want to make a guess, and, I'm sorry, it's been so
17 long, but I thought it was something on the order of
18 65,000, but I really don't recall.
19 Q Do you know whether a written offer of any amount was
20 ever presented to Ms. Kunelius?
21 A I can't recall what my husband did.
22 Q You don't recall either way?
23 A Uh-huh.
24 Q There was no counter or anything of that kind that you

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1 recall?
2 A No.
3 Q And would you be prepared to offer Ms. Kunelius any
4 sum today for that acre?
5 A We'd have to check our finances on that. We are
6 interested. I don't know how quickly we could act at
7 this very moment.
8 MR. CONROY: This is clipped rather
9 than stapled, but it's a two-page document. I'd
10 ask to have that marked as 33, please.
11 (WHEREUPON, Exhibit No. 33,
12 Christianson letter to Kunelius, dated May 26,
13 2004, marked for identification.)
14 Q Take a look at Exhibit 33, please, and let me know
15 when you've oriented yourself. Again, I'm not going
16 to ask you a lot of details.
17 A Oh, great. Couldn't recall whether this included Eye
18 of the Storm or not. I'm really pleased to see that
19 it did. Uh-huh.
20 Q Do you recall that letter?
21 A Uh-huh.
22 Q Yes or no. You just have to say yes or no. You can't
23 say --
24 A Okay. I'm going to say, no, I don't recall the

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MINIDEP by Kenson

1 letter, but it looks like what my husband described to
2 me.
3 Q You referred earlier this evening to such a document.
4 A Uh-huh.
5 Q Do you think this is that document?
6 A Probably he said that he has at home, yeah.
7 Q Do you know if this letter was sent?
8 A Yes.
9 Q It was?
10 A I think it was sent.
11 Q Was there a response?
12 A I think we went to Boothroyd's office and spoke about
13 it, but I don't think we were interested.
14 Q Did you go to Mr. Boothroyd's office with your
15 husband?
16 A Yeah, I believe so.
17 Q Was it just the three of you that met there?
18 A Yes, I believe so. Might have been Mr. Kachajian. I
19 don't know.
20 Q And did that occur soon after this May 26, 2004, date?
21 A Well, this may have actually been prior to, because it
22 says, "Let me reiterate what we offered." So, it may
23 have been a follow-up letter.
24 Q To the meeting?

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1 A To the meeting.
2 Q What do you remember about the meeting?
3 A Nothing in particular.
4 Q Nothing at all about any interest or lack of interest?
5 A I think she thought her property was worth more than
6 that.
7 Q If you look about three-quarters of the way down or
8 so, before the set of bullets at the end, it says,
9 quote: Our nine thousand dollar plan is a bird in the
10 hand. Moving forward with us would not preclude you
11 from pursuing a legal action against TPL. Do you see
12 that?
13 A Wow.
14 Q Do you recall anything about that?
15 A I don't know how -- I don't know what knowledge my
16 husband would have had one way or the other regarding
17 whether this offer would or would not affect the sale.
18 Q Do you know whether your husband either informally or
19 formally consulted a lawyer about this issue?
20 A It would have had to have been somebody like a friend.
21 We don't have a lawyer that we work with that, you
22 know, we contacted, but he has a couple of friends
23 that do real estate law in Colorado, and so that might
24 have been the extent of it.

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1 Q But you don't recall one way or the other?
2 A No, I do not. Seems rather a bold statement. In
3 fact, on face value, I would think that they would be
4 in conflict, but I don't know anything about --
5 Q Okay.
6 MR. CONROY: This one I don't believe
7 has been marked.
8 MS. DeBELLIS: It's Exhibit 10.
9 MR. CONROY: Oh, it is, okay. Yeah,
10 would you put that in front of her, please. Want
11 me to mark it again?
12 MS. DeBELLIS: Sure.
13 MR. CONROY: Just mark that as 10,
14 please.
15 (WHEREUPON, Exhibit No. 10,
16 Christianson email to FORA, dated December 17,
17 2002, marked for identification.)
18 Q Would you take a look, please, at Exhibit 10 and let
19 me know when you've reviewed it?
20 A Okay.
21 Q Do you recall that document, seeing it before?
22 A Yes.
23 Q And who is Val Talmadge?
24 A I believe that she is regional director of Trust for

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1 Public Land.
2 Q I'm going to direct your attention to the last
3 sentence of the document, quote: They will most
4 likely take on this project unless there is something
5 in the P&S that would be different than what they have
6 done. Close quote. Do you understand what that
7 refers to?
8 A No. To me, I would just have said that they had to
9 scrutinize the purchase and sale before they could
10 make a final decision.
11 Q Back to Exhibit 27. Will you pull that out? Should
12 be in sequence.
13 A Got it.
14 Q Again, looking at the list of potential donors, TPL
15 itself is not listed there, correct?
16 A Correct.
17 Q Was it your understanding throughout the course of
18 this effort to raise these funds that TPL was not
19 expected to contribute its own money to the purchase?
20 A No more than -- I didn't know one way or the other how
21 their staff time is allocated. Is their staff time
22 recouped as costs or is it the part that they donate,
23 which is all the many hours that they spent on the
24 project? But, no, no money.

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1 Q And you mentioned earlier, as I understood it, that
2 you had the understanding that, although TPL may have
3 had the resources to provide a bridge loan, that's not
4 the way they generally did business, or words to that
5 effect.
6 MR. McLAUGHLIN: Objection.
7 Q Is that your understanding?
8 A Yes, but, you know, it's not something that they
9 conveyed to me directly.
10 Q That was my next question. What was the basis for
11 your understanding?
12 A It was probably talking with other people that work in
13 conservation organizations that are more familiar with
14 them and how they like to structure projects.
15 MR. CONROY: And I'm going to have to
16 mark this one as 35, please.
17 MS. DeBELLIS: Thirty-four?
18 MR. CONROY: Oh, I thought 34 was the
19 one -- oh, okay, right, right, exactly, 34. Mark
20 that, please, as 34.
21 (WHEREUPON, Exhibit No. 34, TPL and
22 FORA budgets, dated February 11, 2003, marked for
23 identification.)
24 Q That's a two-page document that we'll staple later,

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1 but it's clipped together now, and I'll ask you, first
2 of all, if you know what that is.
3 MR. McLAUGHLIN: Can I just ask? Is
4 this one of the documents she provided?
5 MR. CONROY: Yes. At least I'm pretty
6 sure it is.
7 A It doesn't look that familiar to me. Oh, there it is.
8 Yeah, I got it.
9 Q Take a moment and look it over and let me know when
10 you're ready.
11 A Okay.
12 Q Do you know what this is?
13 A What the purpose of this is?
14 Q First of all, what is it?
15 A I don't know.
16 Q It's not familiar to you?
17 A Well, it's in my set of documents. I can't tell who
18 created it. It doesn't follow sort of typical layout.
19 Q And you don't remember anything about it from reading
20 it now?
21 A I wish they broke it out a little differently, because
22 I wouldn't even be able to understand what some of
23 these revenue line items, how they break out.
24 Q So, you, first of all, don't know what it is or who

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MINIDEP by Kenson

1 wrote it.
 2 A Right. It seems to be -- in my documents, it's mixed
 3 in quite closely with the assignment of the right of
 4 first refusal. Did the town require anything such as
 5 a funding document as part of their review process?
 6 Because it's lying right between the question and
 7 answer and our unsigned copy of the assignment and
 8 acceptance.
 9 Q And having read it, nothing in it triggers any thought
 10 that this is something that you produced or your
 11 husband produced?
 12 A I don't recall.
 13 Q There's a reference on the second page under the
 14 heading Revenue to Foundation Grants In-Hand,
 15 \$220,000.
 16 A That's Red Acre Foundation, Stow Conservation Trust,
 17 and Black Creek.
 18 Q The three of those combined?
 19 A Yeah. That number, I understand.
 20 Q And were those pledges or actual contributions in-
 21 hand?
 22 A They're pledges. Actually, sorry, Black Creek did
 23 make a contribution to Eye of the Storm, and they put
 24 it in a bank account.

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1 Q How much?
 2 A Twenty thousand.
 3 Q And then there's a reference to secured financing,
 4 300,000. Do you know what that refers to?
 5 A I would imagine that it's the amount of money that we
 6 need to bridge the difference. I've seen that 300,000
 7 dollar number come up before as the gap between
 8 pledges to date and what money needs to be raised.
 9 Q But you don't know anymore than that about that item?
 10 A I would love to find out if this document went to the
 11 town as part of their, you know, review.
 12 Q But you don't know?
 13 A I don't know.
 14 Q And then it says: Sale of assets and CPC, 600,000.
 15 Do you know what that refers to?
 16 A Well, the CPC grant was 300,000 for open space, and I
 17 don't know how the other part -- I'm just guessing,
 18 because I really don't know. I would say it's a
 19 combination of selling property to Eye of the Storm.
 20 I don't know. It's been too long.
 21 MR. McLAUGHLIN: Can I interrupt you
 22 for a second?
 23 MR. CONROY: Yeah.
 24 MR. McLAUGHLIN: Off the record.

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1 (Brief discussion off the record)
 2 THE WITNESS: I don't understand this.
 3 MR. CONROY: Okay. Fair enough. What
 4 about this, Lucie? Is that marked?
 5 MS. DeBELLIS: No.
 6 MR. CONROY: This is a five-page
 7 document with the letterhead Peter R.
 8 Christianson on it, and we'll mark that as
 9 No. 35.
 10 (WHEREUPON, Exhibit No. 35,
 11 Christianson letter to Scofield, dated March 3,
 12 2003, marked for identification.)
 13 Q Are you familiar with that?
 14 A Yup.
 15 Q This is a cover letter to Dean Scofield that reports
 16 that collection of a total of \$11,500 in donations
 17 from you and others, right?
 18 A Uh-huh, to Stow Conservation Trust.
 19 Q Right. To your knowledge, was that the totality of
 20 the donations that FORA members made in this matter?
 21 A Yes.
 22 Q My notes reflect, and the record will speak for
 23 itself, and I can't vouch for the accuracy of it, but
 24 my notes reflect that there was some reference made by

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1 you, or perhaps by Mr. McLaughlin, in the first
 2 session of your deposition to 22,000 being donated by
 3 FORA members. I believe that the 11,500 is the
 4 accurate figure, and I just wanted to check your
 5 memory of that.
 6 A Yeah, this is the accurate figure. The only other
 7 thing I'd consider is that Black Creek may have done
 8 10,000, but, no, I don't think so. I think that
 9 stated Eye of the Storm, and that coincides with the
 10 check, this delivery of the deposit of 11,500.
 11 MR. CONROY: Next one, please. We'll
 12 make this 36.
 13 (WHEREUPON, Exhibit No. 36,
 14 Christianson handwritten calculations, marked for
 15 identification.)
 16 Q Do you recognize Exhibit 36?
 17 A My husband's handwriting.
 18 Q There's a reference there to 75,000 RAF. Do you know
 19 what that refers to?
 20 A Possible additional pledge from Red Acre Foundation
 21 for \$75,000 above the 100,000 that they already
 22 pledged.
 23 Q Are you speculating about that?
 24 A I'm speculating, but I do believe that they did

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1 consider a higher amount at some point.
 2 Q There's a figure of 100,000 below that, too. Do you
 3 see that?
 4 A Uh-huh.
 5 Q Do you know what that refers to?
 6 A My guess is that's their previous pledge, but I don't
 7 know. That's Tom Shepard's email address at the
 8 bottom. He's on the board of Stow Conservation Trust.
 9 Q I see, okay.
 10 A It was something that he probably faxed to Tom for a
 11 conversation. I'm sorry. I don't remember that.
 12 MR. CONROY: This will be 37, please.
 13 MR. McLAUGHLIN: It's actually 14.
 14 It's already 14.
 15 MR. CONROY: So, we'll refer to that as
 16 No. 14.
 17 (WHEREUPON, Exhibit No. 14,
 18 Christianson email to FORA, dated July 23, 2003,
 19 marked for identification.)
 20 Q Back to 14, then, Ms. Furman, specifically, on Page 2,
 21 this, of course, is the email, I guess, from your
 22 husband to the FORA members, correct?
 23 A Uh-huh.
 24 Q Dated July 23, '03. Now, turning to Page 2, roughly

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1 the middle of the page: When Craig said we had done
 2 nothing, he omitted the following: RAF, \$125,000.
 3 Does that refer to a pledge by RAF?
 4 A Uh-huh.
 5 Q Yes or no?
 6 A Yes.
 7 Q And SCT, 100,000, is that also a pledge?
 8 A Yes.
 9 Q And then Black Creek, 20,000, is that the contribution
 10 that you mentioned a minute ago?
 11 A Yes.
 12 Q And do you know when those pledges and that
 13 contribution were made?
 14 A How interesting. I believe I might have a document in
 15 here for Black Creek. I would have thought the
 16 documentation for Red Acre Foundation and Stow
 17 Conservation Trust would have gone to TPL.
 18 Q So, you don't know offhand when they were made?
 19 A I think -- well, first of all, the Red Acre Foundation
 20 went up, because it was referred to as 100,000 earlier
 21 on. Let me see. This will take me some time to find
 22 something.
 23 Q Okay. Well, let's pass it, then.
 24 A But, at any rate, it was fairly early on in the

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1 project. I think they were actually rather
2 instrumental in, you know, kibitzing TPL to, you know,
3 the early signage support from local organizations.
4 MR. CONROY: Did we mark this one?
5 MS. DeBELLIS: Exhibit 17.
6 Q I'll put Exhibit 17 in front of you. Do you see that?
7 A Uh-huh.
8 Q And this is a letter from you to Craig headed DRAFT
9 No. 2, with a handwritten 9/11/03. Do you see that?
10 A Uh-huh.
11 Q Forgive me, because this obviously was asked earlier,
12 but I don't recall. Was this actually sent, or was
13 this a draft that was not sent?
14 A I believe it was sent.
15 Q You think it was sent?
16 A Yes.
17 Q And did you write it? It's signed by you, or it's got
18 your signature block.
19 A Yes.
20 Q Do you want to take a moment to orient yourself?
21 A No, we've looked at this a couple times before, so.
22 Q The fourth paragraph or so down, As we continue to
23 restate, do you see that?
24 A Okay.

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1 Q Our diverging visions for this project. The last line
2 of that paragraph says: We think that TPL's project
3 management is completely defensible. Can you explain
4 what that refers to?
5 A Seems like bad grammar. If we pursue the original
6 plan, we think that TPL's project management is
7 completely defensible. That sentence makes absolutely
8 no sense.
9 Q You don't understand it?
10 A It's not an if then. If we pursue a plan, then TPL's
11 project management is defensible. The sentence does
12 not make sense to me.
13 Q I guess that's two of us, then.
14 A Seems complimentary a little bit.
15 Q But you don't know what it means?
16 A I do not know what it means.
17 Q At the bottom of the letter, or toward the bottom of
18 the letter, I'm sorry, the first page, well, the last
19 full paragraph.
20 A Okay.
21 Q It begins: TPL is choosing.
22 A Okay.
23 Q Second sentence: There was an understandable
24 reluctance on the part of TPL to fund-raise before

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1 certain key decisions were made regarding town support
2 and zoning board approvals. Decisions that put off
3 the funding campaign were based on real concerns and
4 considerations. Can you explain what that refers to?
5 A Well, and I think I've made mention to this before,
6 you don't want to request funds from foundations and
7 then write them back and say, gee, I'm sorry, this
8 project can't go forward. We can't use your funds.
9 It would basically prevent TPL from ever going to that
10 foundation again for the rest of their, you know,
11 existence. It really puts foundations in a very bad
12 strait when people don't take their money.
13 Q And that's another reference to that concept?
14 A Yeah.
15 MR. CONROY: I know we've marked this
16 one. Lucie, which number is that?
17 MS. DeBELLIS: It's Exhibit 23. We
18 didn't mark it. We have it on the list, but we
19 didn't mark it.
20 MR. CONROY: Let's mark that as 23.
21 (WHEREUPON, Exhibit No. 23, FORA email
22 to Perry, dated September 30, 2003, marked for
23 identification.)
24 Q You're oriented to that?

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1 A I've looked at this one before, yeah.
2 Q And this is a letter from FORA members to Mr. Perry,
3 correct?
4 A Yes.
5 Q Of September 30, '03. First full paragraph after Dear
6 Ross, again, a few minutes ago we spoke of this
7 passage where Craig said he had been trying to either
8 push the project along or kill it for quite some time.
9 Do you see that?
10 A Uh-huh.
11 Q I'm not sure that we've completely clarified what that
12 means. Can you shed any further light on what is
13 referred to with respect to killing it, the
14 possibility of killing it?
15 A Well, again, all I've said is I'm surprised that Craig
16 would use this kind of language, and, I mean, I don't
17 know. You want me to conjecture what it means based
18 upon --
19 Q For what it's worth.
20 MR. McLAUGHLIN: Objection.
21 Q Tell you what. Mr. McLaughlin is right. You
22 shouldn't be conjecturing.
23 A Yeah.
24 Q You have no actual memory?

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1 A No, I don't. I don't know.
2 Q Fine. Last item on the bottom of that first page:
3 The funds guaranteed to TPL to date are precisely
4 \$1,600,500. What does that mean, guaranteed?
5 A I don't know. It must include the sale of properties.
6 MR. CONROY: And the last exhibit I
7 have, this was not produced by you but, rather,
8 by TPL. I'll mark that as 37.
9 (WHEREUPON, Exhibit No. 37, Lapointe
10 email to FORA, dated January 16, 2003, marked for
11 identification.)
12 Q This one might be new to you, so just take a moment,
13 please, and review that.
14 A Chris Lapointe. He was Craig's assistant.
15 Q Do you have it?
16 A Okay. Thank you.
17 Q Having reviewed it, do you remember it?
18 A Yes, this is my first foray into the town offices to
19 talk to the Planning Board and the building
20 commissioner.
21 Q And this is a report on that discussion?
22 A Uh-huh, yeah. They were very, very friendly.
23 Q What do you remember about that event?
24 A Being the last time they were being very friendly to

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1 me.
2 Q Can you describe what happened?
3 A No, let's see. I went through all of the 142 files
4 that they had there and made some photocopies, and,
5 basically, as I reported here, they were just very
6 upbeat and encouraging.
7 Q This was good news as you saw it?
8 A Yeah, it was.
9 Q And what was your purpose in reporting this to Craig?
10 A To give him a notion of how the town was going to
11 respond to going after variances.
12 Q And what was his reaction?
13 A I don't recall.
14 Q The top email, it's a little hard for me to figure out
15 where -- let me ask the question. Is this a single
16 email or is this two emails?
17 A Chris Lapointe is writing to me saying that -- wait a
18 minute. Chris has asked for any previously mailed
19 assent, if you have any assent. Why would Chris refer
20 to himself?
21 Q This is what's confusing me.
22 A Maybe -- I don't know. At any rate, then I responded,
23 and that was my one email that I had, because that's
24 January 16th and that was January 9th, was my one

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DEPOSITION OF SERENA FURMAN

MINI-DEP by Kenson

1 email to Craig.
 2 Q All right. Let me just clarify it this way. A few
 3 inches down in the document there's a date, January 9,
 4 2003.
 5 A Uh-huh. So, I copied and pasted a previous email to
 6 Craig.
 7 Q So, the part of the document that starts with January
 8 9, 2003, is an email of that date to Craig?
 9 A Yeah.
 10 Q And then above that is, by some means or other,
 11 forwarding that?
 12 A Yeah, and Chris Lapointe had come on as an assistant
 13 and wanted to accumulate all the documents.
 14 Q Were you encouraged by that event that you're
 15 reporting here?
 16 A The town meeting, absolutely.
 17 Q Not at the town meeting.
 18 A I'm sorry. At town hall, where I spent -- oh, yeah.
 19 MR. CONROY: I have nothing else.
 20 REDIRECT EXAMINATION
 21 By MR. McLAUGHLIN:
 22 Q I have a very quick question on Exhibit 33 if you
 23 would just take a look at it.
 24 A Here it is.

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1 Q Looking at Exhibit 33, halfway down, it says: Our
 2 plan is a bird in the hand. Who's our?
 3 A I think it's just my husband and myself making an
 4 offer.
 5 Q And when you were making the offer, were you using the
 6 combined resources of Furman and Christianson?
 7 A Well, the amount that we were going to have to try to
 8 cover, which we probably could have even covered with
 9 a home equity loan, was \$100,000.
 10 Q So, the \$900,000 was not your offer, personally?
 11 A No. Well, it was with an understanding that the CPC
 12 money was available.
 13 Q So, this was not an offer by Ms. Furman and
 14 Mr. Christianson for your purchase of the
 15 property in your name. Is that fair to say?
 16 A Well, technically, I don't know how that would have
 17 shaken out.
 18 Q Because my next question was: who was the buyer?
 19 A Right.
 20 Q And your response to who was the buyer is that you do
 21 not know. Is that fair to say?
 22 A My guess, and it is a guess --
 23 Q I don't want guesses. My question is: did you know
 24 at the time that you wrote the letter who the buyer

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1 was going to be?
 2 A I'll take a pass on that, because I can't --
 3 Q So, the answer is, no, you don't know. Is that fair
 4 to say?
 5 A Right.
 6 Q And did you have a CPC grant of \$300,000 dedicated to
 7 Serena Furman and Peter Christianson?
 8 A No.
 9 Q And the \$300,000 which is referred to in the second
 10 bullet, that was not money that you were paying to
 11 Mrs. Kunelius as part of this, and I'm using the term
 12 offer in quotes here, the \$300,000 which was part of,
 13 quote, our plan was not money that was being given to
 14 Mrs. Kunelius by either yourself or your husband, is
 15 that correct?
 16 A The deal was that Marilyn was going to have to handle
 17 the zoning issues, and then bullet No. 5 says, if 142
 18 Red Acre sold for more than 300,000, you'd keep the
 19 difference.
 20 Q I'm looking at the second bullet under \$900,000 of
 21 revenue.
 22 A Uh-huh.
 23 Q It says 300,000 from the sale of 142 on the market.
 24 A 142 on the market by Marilyn.

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1 Q By Marilyn.
 2 A Right.
 3 Q In other words, that was her money?
 4 A Right.
 5 Q And then on the \$300,000 of EOS philanthropy --
 6 A We would step in and basically buy the farm portion,
 7 and then the town and CPC would cover the open space
 8 going to the town.
 9 Q Were you aware that EOS had informed TPL that it was
 10 not going forward?
 11 A Yeah, I wrote that letter.
 12 Q So, that letter went from EOS to TPL?
 13 A That's right.
 14 Q As to the \$300,000 of philanthropy, looking at the
 15 sixth bullet down, that component of the so-called
 16 offer required financing, is that correct?
 17 A Uh-huh.
 18 Q So, the sixth bullet down says the 300,000 of
 19 philanthropy would require financing because the
 20 pledges and solicitation process would stretch over
 21 three to four years.
 22 A Uh-huh.
 23 Q See that?
 24 A Uh-huh.

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1 Q And so that component of the \$300,000 was not a firm
 2 number that either you or your husband was saying was
 3 guaranteed but, rather, that you were hoping to raise
 4 that money over three or four years.
 5 A No, we had \$225,000 in pledges, but the pledges would
 6 not be paid out in time for closing. So, what we
 7 would have to do is finance the interest between the
 8 time that the pledges would come in and her, you know,
 9 wanting to sign a purchase and sale, plus we'd have to
 10 finance \$75,000 of additional fund-raising we would
 11 have to do over four years.
 12 Q And this was written not by the Friends of Red Acre.
 13 A No.
 14 Q It was written by Peter Christianson.
 15 A Right.
 16 Q And is there anything in this offer, this so-called
 17 offer, that demonstrates that Peter Christianson had
 18 the authority to state that those \$225,000 in pledges
 19 which had been raised in conjunction with a joint
 20 effort with TPL were now available to Peter
 21 Christianson, personally?
 22 A Well, the way it probably would have worked is that
 23 the pledges made to TPL would have been retracted and
 24 then transferred over.

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1 Q So, at the time, Peter Christianson did not have those
 2 pledges to him, personally?
 3 A I think he had a gentleman's call with these
 4 organizations.
 5 Q It then says that Serena and I would guarantee the
 6 remainder of the fund-raising, \$100,000, with a note
 7 or a contract.
 8 A Yeah.
 9 Q So, the shortfall was not going to be paid to
 10 Mrs. Kunelius in cash. It was some sort of note
 11 that was going to be given to her until such time
 12 as the fund-raising had been completed, and that
 13 \$100,000 shortfall would be guaranteed by you
 14 over some period of time, is that correct?
 15 A I don't know. I would have thought it would have been
 16 more like taking out a loan and paying her outright.
 17 Q What zoning responsibilities would be Mrs. Kunelius'
 18 responsibility?
 19 A Some of the same issues that The Trust for Public Land
 20 never resolved about being able to divide the houses
 21 into two parcels.
 22 MR. McLAUGHLIN: No further questions.
 23 Thank you very much. I appreciate your coming
 24 in.

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DEPOSITION OF SERENA FURMAN

MINIDEP by Kenson

1 (WHEREUPON, the deposition concluded at
 2 7:51 P.M.)
 3 (WHEREUPON, Exhibit No. 8, Foundations
 4 spreadsheet, dated January 19, 2003, marked for
 5 identification.)
 6 (WHEREUPON, Exhibit No. 9, FORA budget,
 7 dated January 19, 2002, marked for
 8 identification.)
 9 (WHEREUPON, Exhibit No. 18, MacDonnell
 10 letter to FORA, dated September 10, 2003, marked
 11 for identification.)
 12 (WHEREUPON, Exhibit No. 19, MacDonnell
 13 letter to FORA, dated August 6, 2003, marked for
 14 identification.)
 15 (WHEREUPON, Exhibit No. 20, FORA letter
 16 to MacDonnell, dated August 19, 2007, marked for
 17 identification.)
 18 (WHEREUPON, Exhibit No. 21, Outline:
 19 Should we meet?, marked for identification.)
 20 (WHEREUPON, Exhibit No. 22, Revised
 21 market alternative - variance granted, marked for
 22 identification.)
 23 *****
 24

ERRATA SHEET
Deposition of SERENA FURMAN

Page No.	Line No.	Transcript reads	Change made
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CERTIFICATE
COMMONWEALTH OF MASSACHUSETTS
COUNTY OF ESSEX, ss.

I, Roberta J. Daniels, a Court Reporter and Notary Public within and for the Commonwealth of Massachusetts, do hereby certify that the foregoing continued deposition of SERENA FURMAN was taken before me on April 17, 2007, that the said witness was satisfactorily identified and duly sworn before the commencement of her testimony and that the testimony was taken audiographically by myself and then transcribed by myself. To the best of my knowledge, skill and ability, the within transcript is a complete, true and accurate record of said deposition.

Further, I am not connected either by blood or by marriage with any of the said parties nor am I interested either directly or indirectly in the matter in controversy.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 23rd day of April, 2007.

Roberta J. Daniels, Notary Public
 Commission expires: 11-15-13

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CERTIFICATE

I, SERENA FURMAN, do hereby certify that I have read the foregoing transcript of my testimony and further certify that said transcript is a true, accurate and complete record of said testimony.

Dated at _____, this _____
 day of _____, 2007,
 under the pains and penalties of perjury.

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Melvin Lipman Court Reporting

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